

US EPA RECORD CENTER REGION 5



591088

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, :  
PLAINTIFF, :  
-VS- : CAUSE NO.  
CONSOLIDATED RAIL CORP., : S90-56M  
DEFENDANT/THIRD-PARTY PLAINTIFF.:

-VS- :  
PENN CENTRAL CORP., ET AL., :  
THIRD-PARTY DEFENDANTS. :

UNITED STATES OF AMERICA, :  
PLAINTIFF, :  
-VS- : CAUSE NO.  
PENN CENTRAL CORP., : 3:93-CV-584RM  
DEFENDANT. :

STATE OF INDIANA :  
PLAINTIFF, :  
-VS- : CAUSE NO.  
CONSOLIDATED RAIL CORP., : 3:93-CV-456RM  
ET AL., :  
DEFENDANT. :

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Deposition of MICHAEL L. CIOFFI, a witness  
herein, taken by the plaintiff as upon  
cross-examination pursuant to the Federal Rules of  
Civil Procedure and pursuant to Notice to Take  
Deposition and stipulations hereinafter set forth  
at the office of American Premier Underwriters,  
1400 Provident Tower, One East Fourth Street,  
Cincinnati, Ohio at 10:16 a.m. on Tuesday June 21,  
1994 before Jane Anne Fitch a notary public within  
and for the State of Ohio.

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## 1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Peter E. Jaffe, Esq.

4 of

5 Environmental Enforcement Section

6 Environment and Natural Resources Division

7 PO Box 7611

8 Ben Franklin Station

9 Washington, DC 20044-7611

10 and

11 Kurt N. Lindland, Esq.

12 of

13 U.S. Environmental Protection Agency

14 Region 5: CS-3T

15 77 West Jackson Boulevard

16 Chicago, Illinois 60604

17 On behalf of the Plaintiff, State of Indiana:

18 Timothy J. Junk, Esq.

19 of

20 State of Indiana, Office of the Attorney

21 General

22 Indiana Government Center South

23 402 West Washington Street

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25 Indianapolis, Indiana 46204

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1 On behalf of the Defendant, Penn Central Corp.:

2 Pierce E. Cunningham, Esq.

3 of

4 Frost & Jacobs

5 2500 PNC Center

6 201 East Fifth Street

7 Cincinnati, Ohio 45202-4182

8 On behalf of the Defendant, Consolidated Rail  
9 Corp.:

10 Carolyn M. Landever, Esq.

11 of

12 Bingham, Dana & Gould

13 Suite 1200

14 1550 M Street, N.W.

15 Washington, D.C. 20005

16 - - -

17 S T I P U L A T I O N S

18 It is stipulated by and among counsel for  
19 the respective parties that the deposition of  
20 MICHAEL L. CIOFFI, a witness herein, may be taken  
21 as upon cross-examination pursuant to the Federal  
22 Rules of Civil Procedure, and pursuant to Notice to  
23 Take Deposition; that the deposition may be taken  
24 in stenotypy by the notary public-court reporter  
25 and transcribed by her out of the presence of the

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1 witness; that the transcribed deposition is to be  
 2 submitted to the witness for his examination and  
 3 signature, and that signature may be affixed out of  
 4 the presence of the notary public-court reporter.

5 - - -

6 I N D E X

7 WITNESS	CROSS-EXAM	CROSS-EXAM	CROSS-EXAM
8 Michael L. Cioffi	(Jaffe)	(Junk)	(Landeever)
9	12, 210	130, 221	134

10 - - -

11 E X H I B I T S

12 DEPOSITION EXHIBITS	MARKED
13 No. 1, a 2-page document entitled,	13
14 "Notice of Deposition of Michael L.	
15 Cioffi."	
16 No. 2, a 8-page document entitled,	14
17 "Continuation of Rule 30(b)(6)	
18 Deposition."	
19 No. 3, a multi-page document entitled,	20
20 "Response to Plaintiff United States'	
21 First Set of Interrogatories and Requests	
22 for Production of Documents and Things	
23 to Defendant Penn Central Corporation."	
24 No. 4, a 5-page letter to Peter E.	107
25 Jaffe, Esq. from Robert S. Kaiser dated	

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1 May 28, 1994.

2 No. 5, a 8-page document entitled, 136

3 "Defendant Conrail's Second Set of

4 Interrogatories and Requests for Documents

5 to Third Party Defendant Penn Central

6 Corporation."

7 No. 6, a 4-page document entitled, 136

8 "Defendant and Third Party Plaintiff

9 Conrail's Third Set of Interragatories

10 and Requests for Production of Documents

11 to Defendant and Third Party Defendant

12 Penn Central Corporation."

13 No. 7, a multi-page document entitled, 136

14 "Third-Party Defendant Penn Central's

15 Response to Defendant Conrail's Second

16 Set of Interragatories and Requests for

17 Documents."

18 No. 8, a 8-page document, "Penn Central 136

19 Corporation's Response to Conrail's Third

20 Set of Interragatories."

21 No. 9, a 3-page document entitled, 145

22 "Third Party Plaintiff Consolidated Rail

23 Corporation's First Request for

24 Production of Documents to Third Party

25 Defendant Penn Central Corporation."

1 No. 10-A, a 1-page letter to F.K. 175  
2 Barklay from Wilson R. Elliot  
3 dated July 1983, bates stamped  
4 EP 07213.

5 No. 10-B, a 1-page memorandum to J.H.  
6 Dinehart from F.K. Barclay dated  
7 August 2, 1983, bates stamped EP  
8 07214.

9 No. 10-C, a 1-page letter to F.K. Barclay 175  
10 from Wilson R. Elliot dated September 5,  
11 1983 bates stamped EP 07215.

12 No. 10-D, a 3-page memorandum to R.E. 175  
13 Hatten, et al. from F.K. Barclay dated  
14 August 8, 1983 bates stamped EP 07216  
15 through EP 07218.

16 No. 10-E, a 2-page memorandum to W.R. 175  
17 Elliot from F.K. Barclay dated September  
18 8, 1983 bates stamped EP 07219 through  
19 EP 07220.

20 No. 10-F, a 2-page letter to Donald M. 175  
21 Connelly from Wilson R. Elliot dated  
22 December 26, 1983 bates stamped EP 07221  
23 through EP 07222.

24 No. 10-G, a 2-page document entitled, 175  
25 "United Transportation Union," dated

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1 February 5, 1984 bates stamped EP 07223  
2 through EP 07224.

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1                   And also, we are here, of course, in  
2 the full spirit of cooperation, whatever questions  
3 you have that are relevant within the rules we have  
4 to have Mr. Cioffi answer, we would be happy to  
5 have Mr. Cioffi answer them.

6                   MR. JAFFE: Let me see if I can see  
7 what you're requesting. You're requesting a break  
8 from 12:00 to 2:00?

9                   MR. CUNNINGHAM: Let's see how far  
10 we get. I don't want to inconvenience anybody. He  
11 has to be there. We'll be happy to come back at  
12 2:00. Is that right, Michael?

13                  THE WITNESS: Two to 2:30. Why  
14 don't we see where we are at 12:00. I'm hoping we  
15 can be finished. Let's go ahead and ask whatever  
16 you want.

17                  MR. JAFFE: Okay. And you are  
18 designating Mr. Cioffi solely for subject matters 1  
19 and 19 in the Rule 30(b)(6) deposition rules?

20                  MR. CUNNINGHAM: Right. I think  
21 you've already taken a deposition from another Penn  
22 Central witness regarding the other numbers.

23                  MR. JAFFE: As I think I indicated  
24 in a letter to you, maybe more than one letter, and  
25 I think I indicated on the record in the previous

1 taking of that Rule 30(b)(6) deposition, we do not  
2 believe that any of the paragraphs in our 30(b)(6)  
3 Deposition have been responded to fully.

4 And I just want to understand for the  
5 record, you will not be designating any further  
6 30(b)(6) deponents?

7 MR. CUNNINGHAM: That's correct. Of  
8 course, your characterization of the first witness,  
9 we disagree with this. It won't be the first or  
10 last disagreement.

11 THE WITNESS: Mr. Jaffe, let me say,  
12 if you feel a question hasn't asked answered in the  
13 past, please ask me and I'll be happy to answer  
14 it.

15 MR. JAFFE: That's from your own  
16 personal knowledge?

17 THE WITNESS: On those topics I'm  
18 the most knowledgeable person in the company.

19 MS. LANDEVER: On all the  
20 questions?

21 MR. CUNNINGHAM: We just want to  
22 show our thorough and complete cooperation.  
23 Questions you have that are relevant in the areas  
24 we've talked about, we're prepared to go ahead. So  
25 pose the questions and it will save time.

1 MR. JAFFE: All right. I wasn't  
2 going to say anything about this on the record, but  
3 now that you've put all this on record; the record  
4 should reflect that we are not at the location  
5 which was noticed in either of the deposition  
6 notices, and that we showed up on time to that  
7 location, but that the deponent and attorney for  
8 the deponent were not there.

9 We were informed when we got there  
10 that they would be available a few blocks away,  
11 which certainly is of no significant inconvenience  
12 to us, we just would have appreciated if you would  
13 have informed us ahead of time, instead of delaying  
14 the deposition.

15 MR. CUNNINGHAM: I do regret any  
16 inconvenience. Had we known earlier, we would have  
17 notified you. But you were in the air. It's hard  
18 to get ahold of people in the air.

19 MR. JAFFE: And further, I'm a  
20 little concerned that you're requesting breaks,  
21 although certainly a 2-hour break is not a  
22 significant inconvenience, but this date was chosen  
23 by you after significant negotiations, more than is  
24 common, and I just hope that we can complete the  
25 deposition as expeditiously as possible today.

1 Let's go ahead and --

2 MR. LINDLAND: I'm still a little  
3 unclear whether you're being produced today for 1  
4 and 19 or for all of them.

5 MR. CUNNINGHAM: I want the record  
6 clear; 1 and 19.

7 MS. LANDEVER: But Mr. Cioffi --

8 THE WITNESS: No. I'll answer all  
9 the questions. Go ahead. And I would appreciate  
10 it if just one of you questioned me.

11 MR. CUNNINGHAM: That's fine. All  
12 of them. Go ahead. Just start.

13 THE WITNESS: Who is going to be  
14 asking the questions?

15 MR. JAFFE: I'm going to be asking  
16 the questions.

17 MICHAEL L. CIOFFI  
18 of lawful age, witness herein, being first duly  
19 sworn as hereinafter certified was examined and  
20 deposed as follows:

21 CROSS-EXAMINATION

22 BY MR. JAFFE:

23 Q. Now, at this point would you please  
24 state your name for the record?

25 A. Michael Cioffi.

1 Q. And could you give us your present  
2 position and employer, please?

3 A. Vice-President and Assistant General  
4 Counsel, American Premier Underwriters.

5 Q. Is American Premier Underwriters the  
6 same company as Penn Central Corporation under a  
7 new name?

8 A. We changed our name effective,  
9 approximately, March of 1994.

10 Q. Is it identical to the named  
11 defendant in the United States versus Penn Central?

12 A. I don't know what you mean by  
13 identical. The company is different, because we've  
14 sold companies, we've bought new companies. So I  
15 don't know what you mean by identical.  
16 Shareholders are different.

17 Q. Is it the defendant in the case  
18 United States versus Penn Central?

19 A. Yes.  
20 (Cioffi Exhibit No. 1 was marked for  
21 identification.)

22 Q. All right. Let me hand you what's  
23 been marked as Exhibit No. 1 for this deposition.  
24 Ask you to review that document, if you would. And  
25 just tell me if you are appearing today in response

1 to that Notice of Deposition?

2 A. Yes.

3 (Cioffi Exhibit No. 2 was marked for  
4 identification.)

5 Q. Now let me show you what's been  
6 marked as Exhibit No. 2 and ask you to review  
7 that.

8 A. Okay. I've reviewed it.

9 Q. Thank you. And as I understand it  
10 from statements that were made by counsel before I  
11 began questioning, you are being produced today in  
12 response to paragraphs 1 and 19 in that Deposition  
13 Notice?

14 A. That's correct. Although I think as  
15 I mentioned to you on the record, I will be happy  
16 in an effort to expedite this case and this  
17 deposition, answer any questions you have on the  
18 other matters as well.

19 Q. Well, before we get to those, let me  
20 just see if I can learn a little bit more about  
21 you. Can you tell me what your, briefly, your  
22 employment history is?

23 A. Well, I graduated from law school in  
24 1979, began working as an Assistant Attorney  
25 general for the State of Ohio, was an Assistant AG

1 for approximately two years. I then joined the law  
2 firm of Frost & Jacobs, worked as an associate,  
3 became a partner. And then in 1988 I joined the  
4 Penn Central Corporation.

5 Q. What was your first position with  
6 Penn Central Corporation?

7 A. Assistant General Counsel.

8 Q. Did you have particular duties as  
9 assistant general counsel, areas of --

10 A. My areas of responsibility were  
11 primarily litigation matters.

12 Q. General litigation?

13 A. Correct. All litigation against the  
14 company.

15 Q. How long did you hold that position?

16 A. Approximately two years -- a year,  
17 year and a half, something like that.

18 Q. And that position was terminated by  
19 advancement?

20 A. Yeah. I was promoted to a position  
21 we call Staff Vice-President.

22 Q. And what are the responsibilities of  
23 Staff Vice-President?

24 A. The duties remained primarily the  
25 same with perhaps some additional business related

1 responsibilities.

2 Q. And how long did you hold that  
3 position?

4 A. About a year, year and a half again.

5 Q. And you were then promoted again?

6 A. That's correct.

7 Q. To what position?

8 A. Vice-President and Assistant General  
9 Counsel.

10 Q. And that's your present position?

11 A. That's correct.

12 Q. And what are the responsibilities of  
13 that position?

14 A. My primary responsibilities are,  
15 again, all litigation matters against the  
16 corporation, environmental matters, and again some  
17 business responsibilities related to the operations  
18 of some of our subsidiaries.

19 Q. Do you have any, either educational  
20 background or job related background in the  
21 science, chemistry, organic chemistry?

22 A. I certainly took those courses in  
23 high school and undergraduate school. I've  
24 attended various seminars since really joining the  
25 Penn Central Corporation related to the science and



1 particularly the environmental science.

2 Q. Perhaps, I'll just ask the question  
3 this way: Do you have any background other than  
4 legal background that would qualify you for -- as  
5 environmental counsel or in criminal matters?

6 A. I think I stated my background.

7 Q. So you haven't -- All right. Turning  
8 to what's been marked as Exhibit No. 2, could you  
9 describe for me please the preparation that you've  
10 taken in review of documents or interviews of  
11 people which you've taken in preparation for this  
12 deposition?

13 A. I've read the document. I've  
14 discussed it, obviously, with counsel. I've been  
15 briefed by counsel as to what the discovery in this  
16 case has revealed, vis-a-vis these matters. I've  
17 examined our files here in Cincinnati concerning  
18 this case. I've discussed the substance of these  
19 matters with my paralegal who is generally  
20 responsible for gathering this information for me.  
21 I've also inquired as to the existence of documents  
22 that might provide some light on these matters  
23 which are really stored in Philadelphia at a  
24 warehouse there.

25 Q. Could you describe for me the files,

1 the contents of the files in Philadelphia that  
2 you've reviewed?

3 A. The contents would primarily be  
4 documents generated in the course of this  
5 litigation. So you would see, typically,  
6 deposition transcripts, documents which have been  
7 produced by one party, including us, discovery  
8 notices, pleadings and other papers filed with the  
9 court, correspondence, of course, from Mr.  
10 Cunningham as outside counsel, but documents of  
11 those nature.

12 Q. Are there any substantive documents  
13 other than those that have been produced in  
14 discovery by one party or another?

15 A. I'm not sure what you mean by  
16 substantive documents. I think I described to  
17 my -- to the best of my knowledge what's in those  
18 files.

19 Q. Would the answer to my question be  
20 no?

21 A. Repeat the question, would you  
22 please?

23 (The record was read back by the court reporter.)

24 A. Again, not knowing what you mean by  
25 substantive documents, I think the answer to your

1 question is no.

2 Q. Thank you. Regarding the discussions  
3 that you've had with your paralegal, have they been  
4 primarily regarding those documents which are in  
5 the Cincinnati files?

6 A. No, not primarily. They have been  
7 about the matters raised in the exhibit you've  
8 marked as 2. They have involved all aspects of the  
9 case.

10 Q. What knowledge does your paralegal  
11 have or what investigations has your paralegal  
12 conducted --

13 A. I don't know what knowledge she has.  
14 It would be impossible for me to know. Generally  
15 her duties are not unlike paralegals as I  
16 understand them around the country: She's  
17 instructed by me from time to time to investigate  
18 matters to make factual inquiries, to gather  
19 documents. Generally speaking she doesn't draw  
20 conclusions from those documents. She provides the  
21 information to me and then I draw whatever  
22 conclusions I think are appropriate.

23 Q. All right. Now, relating to your  
24 inquiry into the existence of documents stored in  
25 Philadelphia.

1 A. Yes.

2 Q. Are those documents primarily those  
3 that are referred to in the responses to  
4 interrogatories and document requests, or are there  
5 other documents which you've reviewed in  
6 preparation for this deposition?

7 A. I believe they have been referred to  
8 in documents, in response to document requests  
9 served by the government in this case. I also  
10 believe they have been referred to in  
11 correspondence between you and our outside counsel  
12 in this case.

13 Q. Are there other documents that are  
14 not referred to in those?

15 A. Not to my knowledge.  
16 (Cioffi Exhibit No. 3 was marked for  
17 identification.)

18 Q. Let me give you what has been marked  
19 as Exhibit No. 3, please.

20 A. Okay.

21 Q. Ask you to review that document.

22 A. I reviewed it.

23 Q. Okay. By the way, before we turn to  
24 that, could you give me your paralegal's name,  
25 please?

1           A.     Laurie Lackner, L A C K N E R.   First  
2   name was Laurie.

3           Q.     This is the response to Plaintiff  
4   United States first set of interrogatories and  
5   request for production of documents and things sent  
6   to Penn Central correspondence; is that correct?

7           A.     I see that, yes.

8           Q.     Could you turn to the second to the  
9   last page, please, and at the bottom there's a  
10   signature with your name beneath it.

11          A.     That's correct.

12          Q.     Is that your signature?

13          A.     That's correct.

14          Q.     And is the substance of this  
15   verification true?

16          A.     Yes, it is.

17          Q.     Thank you.

18          A.     I notice there is one error, it has  
19   there as my title Staff Vice-President, that's an  
20   error. That was a previous title. By that time I  
21   was Vice-President, I believe.

22          Q.     Okay. What part did you take in  
23   responding to these discovery requests?

24          A.     Well, when the requests were served,  
25   I was provided a copy. I believe you served our

1 counsel. I don't recall them arriving directly  
2 from you to me. It indicates Mr. Cunningham sent  
3 them to me. I discussed them again with my  
4 paralegal. I discussed them vis-a-vis documents we  
5 may have in our possession and control. I  
6 discussed them with Mr. Cunningham. We discussed  
7 where documents might be in response to those  
8 interrogatories. We discussed whether or not there  
9 were individuals employed by the corporation that  
10 have any firsthand knowledge about those  
11 documents.

12 And then I directed Mr. Cunningham  
13 and his firm to begin exploring those areas and to  
14 provide me with a draft answer. I reviewed a draft  
15 answer, answers I made, more inquiries with my  
16 paralegal and Mr. Cunningham. I verified whether  
17 or not there was -- there were documents in  
18 existence. The draft may have undergone a third  
19 draft. I'm not sure. But that would be pretty  
20 standard procedure.

21 You have to understand, Mr. Jaffe, we  
22 have, including asbestos cases and hearing loss  
23 cases, in which counsel for Conrail is familiar  
24 with I'm sure, probably 15,000 lawsuits. So it's a  
25 very set procedure for corresponding to these,

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1 which I've just outlined to you.

2 Q. Did anyone else assist you in  
3 preparation for this deposition other than the  
4 paralegal and the attorneys at Frost & Jacobs?

5 A. Not directly. I'm sure there were,  
6 people were spoken to and inquiries made. But it  
7 would be Mr. Cunningham, his firm, and my  
8 paralegal, primarily.

9 Q. What other people did you determine  
10 had the firsthand knowledge that you were  
11 describing, if any?

12 A. I determined that really no one had  
13 firsthand knowledge to answer these inquiries that  
14 you were making. And the reason for that is, and I  
15 think it's important for you to understand, is the  
16 history of this corporation. And if you would  
17 like, I would explain that to you.

18 Q. Go ahead.

19 A. The Penn Central Corporation, now  
20 known as American Premier Underwriters, really has,  
21 I think, a singularly unique history in corporate  
22 America. As you may know, the predecessor of Penn  
23 Central Corporation, at least the immediate  
24 predecessor was a company known as the Penn Central  
25 Transportation Company, often known as or called

1 PCTC.

2 PCTC was a company formed in the late  
3 1970's as a result of two very long operating  
4 railroads in the eastern part of the United States  
5 known as the Pennsylvania Railroad and the New York  
6 Central Railroad. Those two railroads merged  
7 sometime in the late '70s, forming PCTC.

8 In late 1970 this combined entity,  
9 this new entity known as PCTC was losing about a  
10 million dollars a day. It filed at the time the  
11 largest bankruptcy petition in the United States  
12 history, and that bankruptcy proceeded in front of  
13 Judge Fullum in the Eastern District of  
14 Pennsylvania from 1970 until approximately October  
15 24th, 1978, which is the date of the consummation  
16 order.

17 Something very unique happened during  
18 the pendency of that bankruptcy. In the early  
19 '70s, the trustees in bankruptcy, who were  
20 operating the company at the time, went to Judge  
21 Fullum and asked for leave to liquidate the  
22 railroads, because they were continuing to lose a  
23 million dollars a day, creditors weren't being  
24 paid, and there was great concern that this  
25 operation just could not continue and could not be



1 reorganized to become a profitable entity.

2           When word of that got out, it created  
3 great concern in congress, and there was fear that  
4 liquidation of these eastern railroads would really  
5 wreck the economy of at least the eastern part of  
6 the United States. Because keep in mind, these  
7 were not only freight railroads, but also commuter  
8 railroads.

9           Congress then decided to appropriate  
10 the rail assets to, in effect, take over this  
11 company by use of its imminent domain power. And  
12 to my knowledge, I'm not sure that this has ever  
13 been done before in the history of corporate  
14 America, but in any case, congress passed something  
15 called the Regional Rail Reorganization Act, by  
16 which it took possession of the railroad.

17           This occurred, the conveyance of the  
18 rail as essentially this railroad business happened  
19 on April 1st, 1976. When that happened, this  
20 railroad business, the cars, the employees, the  
21 records, all of it by law was transferred to  
22 Conrail and AmTrack; the two quasi government  
23 corporations created to receive these assets and to  
24 operate the railroad.

25           So from that point forward, the

1 company involved in your litigation today, the Penn  
2 Central Corporation, was no longer involved in the  
3 rail business, no longer had employees involved in  
4 the operation of the rail business, no longer had  
5 records concerning the operation of the rail  
6 business. Those were physically conveyed, taken by  
7 Conrail, and they began operating the railroad.

8           That's why we sit here today, almost  
9 20 years from that point, almost 20 years after the  
10 Penn Central Corporation no longer operated a  
11 railroad, with no employees who have firsthand  
12 knowledge about the operation of the Elkhart Yard.  
13 It is a unique situation really in corporate  
14 America. Since the consummation in 1978, this  
15 company has also gone through numerous changes, and  
16 virtually there is no member in the, certainly in  
17 the senior management, but even the mid-management  
18 of this company that was even around in the late  
19 '70s and early '80s.

20           And just to finish the story out, in  
21 the early '70s and late '70s I should say, and  
22 early '80s, there was a management team in place  
23 that was interested in buying, for example, oil and  
24 gas companies. Those were bought, they were sold  
25 off, more manufacturing companies were bought and

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1 sold off. And the middle part to the latter part  
2 of the 1980s, telecommunication companies were  
3 bought and sold.

4 And now today as we sit here, all of  
5 our income -- virtually all of our income is  
6 derived from insurance companies. So this company  
7 has had an interesting evolution even after the  
8 bankruptcy. And our name was changed in March of  
9 1994 to reflect the fact that we are now virtually  
10 all insurance business.

11 I tell you that history because I  
12 think it helps you to understand why there's not a  
13 person I can go to in this corporation with  
14 firsthand knowledge. All of those people went to  
15 work for Conrail in April of 1976.

16 Q. Are there any persons you talked to  
17 with some knowledge other than firsthand knowledge?

18 A. With respect to Elkhart, I assume?

19 Q. With respect to the answers to  
20 interrogatories.

21 A. Again, the people I spoke to were my  
22 paralegal, Mr. Cunningham, and the only people I  
23 have some secondhand knowledge about are people who  
24 have been deposed or interviewed in the course of  
25 this litigation. But this is not unlike some

1 others that we're involved in, we have to go out  
2 and find people who are either associated with  
3 Conrail or retired, et cetera, who might have some  
4 knowledge.

5 But there is virtually no  
6 institutional knowledge for the reasons I just  
7 articulated.

8 Q. Did you do that sort of investigation  
9 in response to the interrogatories?

10 A. I think Mr. Cunningham has done some  
11 of that fact investigation in this case, yes.

12 Q. Did you talk to Mr. Stockhoff, did he  
13 assist in any way in response to these  
14 interrogatories and document request?

15 A. He may have been interviewed, but my  
16 understanding is he had virtually nothing to  
17 contribute.

18 Q. As I understand it, although with  
19 respect to that story that you were telling us  
20 about the evolution of the company, although it did  
21 turn over all or virtually all of the documents  
22 relating to the rail business to Conrail, it has  
23 repossessed some of those documents; is that  
24 correct?

25 A. Well, yes. What happened is Conrail

1 was in a document retention program in which a lot  
2 of these older railroad records, and I think as  
3 counsel has explained to you, some of these date  
4 back really to the Civil War era, Conrail wanted to  
5 destroy those, and we made the decision to take  
6 possession of them, kind of, in effect, take them  
7 back from Conrail.

8 I believe those have been categorized  
9 for you in a letter from counsel, I think dated  
10 late May of 1994, and they are certainly available  
11 to you pursuant to Civil Rule 34 to inspect if you  
12 would like.

13 Q. Were any of those documents reviewed  
14 in preparation for your responses to these?

15 A. Not directly. I do have a couple of  
16 people employed who are going through some  
17 microfilm and microfiche of materials, not just for  
18 this case, but generally for other pieces of  
19 litigation as well. And it's been very fruitless  
20 in terms of finding anything that's at all relevant  
21 to this case or the other cases.

22 There are, just so you know,  
23 something like 15 tractor/trailer loads of  
24 documents full of pallets. I think there's  
25 something like 40 pallets in each tractor/trailer

1 which have on them something like 20 boxes. And if  
2 you do the math, there's something like 13,000  
3 boxes. It takes a long time to review those kinds  
4 of documents.

5 As I said, we've hired people to  
6 begin looking at them. I don't know how much  
7 longer I'm going to continue to employ them,  
8 because it appears to be absolutely fruitless. And  
9 I'll just have to make that decision in the future.

10 Q. Are they going through specific  
11 documents or just starting at one end and going  
12 through to the other?

13 A. Some effort has been to direct them  
14 to documents that we -- we think are responsive to  
15 discovery in this case or others, but, again, it's  
16 very difficult. These are documents that have been  
17 sitting around for 20 years. Some of them were  
18 miscategorized by the sold railroad, some of them  
19 have been miscategorized by Conrail. It's a very  
20 tedious, long, and so far very fruitless search.

21 I might also add, somewhat expensive,  
22 because you have to pay people to go through these.

23 Q. Are there some particular categories?

24 A. The categories I think have been  
25 outlined for you in the letter I was referencing in

1 some detail. And as I sit here today, I don't know  
2 exactly which categories they have looked at, and I  
3 haven't had a report from them in a while.

4 Q. As I understand it from the -- the  
5 only documents I understand it that are referred  
6 to, types of documents, categories of documents  
7 that are referred to in the responses are accounts  
8 payable records and waybills records?

9 A. As I understand the array of  
10 documents of these 13,000 boxes that came back from  
11 Conrail, my understanding is those would probably  
12 be the two categories that would be most likely to  
13 reveal something that would have the name Elkhart  
14 on it. The rest of the documents, we have employee  
15 records, general corporate records, claim records  
16 from the bankruptcy. None of those broad  
17 categories would we expect to even mention the name  
18 Elkhart on them.

19 Q. Why, for example, would employee  
20 records not mention the name Elkhart on them;  
21 wouldn't the employee records give some indication  
22 of where the employees were employed, what  
23 railroad?

24 A. You're looking at a railroad system  
25 or systems that operated primarily east of the

1 Allegheny, and I think at the time of the  
2 bankruptcy there were about 75,000 employees,  
3 something between 75,000 and 100,000 employees. Of  
4 those I would say less than one percent --  
5 one-tenth of one percent ever had any association  
6 with the Elkhart Yard. It was a small operation,  
7 to my knowledge.

8               So it would not make sense to me to  
9 look through the records of 100,000 people when the  
10 possibility of someone who worked at Elkhart is so  
11 low. Even if they have no idea if they're there.

12              Q. But the records would indicate on  
13 them where people had worked or it's likely that  
14 they might?

15              A. I can't tell you that that's true.  
16 I've never seen them. So I don't know what kind of  
17 records are there.

18              Q. Okay.

19              A. Again --

20              Q. Let me --

21              A. We're speculating about things I've  
22 never seen, you've never seen. I invite you to  
23 those records, and pursuant to Civil Rule 34, I  
24 think they've been made available to you. If they  
25 haven't, I'm making them available to you pursuant



1 to Rule 34.

2 We've categorized them for you as  
3 we're obligated to do under the rules, and really  
4 the next step is yours.

5 Q. All right. Where did you categorize  
6 these, are you referring to that letter?

7 A. There's a letter, I think, from Mr.  
8 Kaiser of Frost & Jacobs to you.

9 Q. I just want to make sure I understand  
10 what you were referring to.

11 A. Okay.

12 Q. All right. Why don't we move to some  
13 of the specific responses.

14 A. Sure.

15 Q. On page number 3, please. Let me ask  
16 you to just review --

17 A. Which document are you directing my  
18 attention to?

19 Q. I'm sorry. I'm directing your  
20 attention to Exhibit No. 3. Let me ask you to turn  
21 your attention to response number 1 on page 3 of  
22 the response.

23 A. Yes, go ahead.

24 Q. In the response, the first sentence  
25 of the response refers to documents which are

1 provided by Conrail, and I'm hoping you can, with a  
2 bit more particularity, tell me what documents  
3 you're referring to there.

4 A. Well, I think the answer references a  
5 document, I direct your attention to that.

6 Q. The interrogatory request, the  
7 circumstances of your acquisition and other  
8 operations and so forth, and as I read that  
9 document, it describes Conrail's acquisition of  
10 that property.

11 A. Well, I direct your attention to the  
12 second paragraph of the responses which talks about  
13 producing relevant deed schedules, valuation maps,  
14 et cetera. I don't know the status of the  
15 day-to-day discovery in this case, but if those  
16 documents haven't been provided to you, I'm sure  
17 they're being copied.

18 The valuation maps, in case you don't  
19 know what they are, they'll show the line and they  
20 generally have on them a schedule which provides  
21 the dates and the manner by which the railroad  
22 acquired its interest, whether it was a fee  
23 ownership or an easement in the line or the yard in  
24 question. So when you get those maps -- I cannot  
25 sit here today and recite for you the deeds and

1 when and where ownership came from, but they are  
2 reflected on the valuation maps.

3 Does he have them in his possession  
4 or not?

5 MR. CUNNINGHAM: I think he does.

6 THE WITNESS: It's all on there. If  
7 you don't see them on there, we can help you with  
8 that.

9 Q. I am unaware of the valuation maps  
10 that you are describing.

11 A. Conrail also has a set of those as  
12 well.

13 Q. To my knowledge, we have received an  
14 abundant number of documents.

15 A. It would be a map, just so you know  
16 what you're looking for, it has a railroad line on  
17 it or a yard, it will have the dimensions, mile  
18 posts, and it will look like a map of a railroad  
19 line. And then on the -- and these are rather  
20 large documents sometimes.

21 On there there will be a schedule  
22 which has dates on which various segments of the  
23 line -- these things aren't acquired at one time.  
24 Railroads are put together piece by piece, which  
25 has from whom the deed was acquired, when it was

1 acquired, and then kind of the nature of the  
2 title.

3 That's the best information we have  
4 on putting this other record together. Keep in  
5 mind, the rights of the railroad go back to 1849,  
6 and given what happened in the '70s, which I  
7 explained to you, there's no central document we  
8 can go to and say, okay, here's exactly the  
9 ownership. But the best source are these valuation  
10 maps.

11 MR. CUNNINGHAM: Let me suggest  
12 this: If after reviewing your repository of  
13 records you don't find it, write me or call me and  
14 we'll provide it to you.

15 MR. JAFFE: I can tell you right  
16 now, I have received no valuation maps from Penn  
17 Central. It's possible we have received from  
18 Conrail.

19 THE WITNESS: Why don't you look  
20 through the documents? If you don't have them,  
21 we'll provide them. But that's where that  
22 information is contained.

23 Q. One thing we do not have, and perhaps  
24 you could tell me if such documents exist, is  
25 information on the merger from New York Central

1 and, I guess it was Pennsylvania Railroad, to form  
2 Penn Central, which to me seems to be responsive,  
3 at least a little bit, to this question; in the  
4 sense that the company, I mean, attorneys for Penn  
5 Central have argued in certain cases that New York  
6 Central and Penn Central are two separate entities  
7 and it was an asset transfer.

8 A. I'm not aware of those arguments. In  
9 any case there are merger documents, certainly.  
10 And they have been produced, I know, to the  
11 government in other litigation. But we're  
12 certainly happy to produce them again. I don't  
13 think it's responsive to number 1. You're  
14 certainly welcome to it.

15 Q. Well, I would appreciate such  
16 documents to the extent that you have them.

17 Let's turn to question number --  
18 interrogatory number 2, please. Let me ask you to  
19 review that as well.

20 A. Okay. I've reviewed it.

21 Q. All right. There are only a couple  
22 of previous owners, there are really only two  
23 previous owners which are identified in the  
24 response here.

25 Is that because there were only two

1 previous owners, or are there more previous owners  
2 that are not identified here?

3 A. I'm not aware of any previous owners  
4 at this point in time, other than what's mentioned.

5 Q. What steps were taken to determine  
6 when, who the previous owners were?

7 A. Again, looking back through whatever  
8 records we have in terms of the chain of ownership,  
9 the valuation maps, documents that might appear in  
10 the real estate file that might contain, for  
11 example a lease of a piece of property in the '30s  
12 or '40s, documents like that.

13 Q. What do you know about the operations  
14 of the Headlight?

15 MR. CUNNINGHAM: Let me, before we  
16 get into that, and I'll only say this once if we  
17 can have an understanding on this. As you know  
18 we've objected to a number of the interrogatories,  
19 and we do not want to waive those objections. But  
20 we do want to allow the witness to answer today,  
21 and I don't want to interrupt the record each time  
22 with an objection.

23 So if it's agreeable with you, Peter,  
24 we would at the outset have a standing objection  
25 wherever the written responses show an objection to

1 a preservation of that objection without a  
2 recitation today of that same objection. Is that  
3 all right?

4 MR. JAFFE: Understood.

5 MR. CUNNINGHAM: Okay. That will  
6 save us time and we will allow the witness to  
7 answer those questions.

8 BY MR. JAFFE:

9 A. If I recall your question, it was  
10 about my knowledge concerning the Headlight; this  
11 newsletter, I have really no knowledge. I don't  
12 know when it was produced, how many volumes or  
13 copies there are, and I've never read one.

14 Q. Okay. When it says a new produced  
15 for company employees, would that be company  
16 employees, employees of the New York Central or  
17 Penn Central Railroad?

18 A. I would assume so, but it's a guess  
19 assumption. I don't know who it was circulated to,  
20 to be honest with you.

21 Q. What -- Where did you get this  
22 information that there was such a thing as the  
23 Headlight?

24 A. I'm sure it's some secondhand source  
25 such as an employee who told us that there were

1 these newsletters. I'm not aware of us having any  
2 of these in our possession. If we do, we'll  
3 certainly produce them to you. But it's -- I'm  
4 sure it's some second or thirdhand recitation of  
5 its existence.

6 We tried to be as complete as we can  
7 in these answers, and we've provided you  
8 information and facts which you have to understand,  
9 as I've said in the verification, is based on  
10 information provided to us from a variety of  
11 sources. Most of it is gross hearsay, some of it  
12 not terribly reliable, but I think in the spirit of  
13 discovery and trying to give you everything we  
14 have, we've done that.

15 Q. Okay. I'm just trying to understand  
16 the time frame in which the Headlight was produced  
17 so that I know whether it was something produced  
18 prior to New York Central's ownership.

19 A. It would have been produced prior to  
20 1976, and I would say --

21 Q. But during New York Central and Penn  
22 Central --

23 A. I would assume so. I think that's a  
24 reasonable assumption.

25 Q. All right. Have you reviewed any of



1 these documents in Philadelphia or any other place  
2 to determine whether you had copies of the  
3 Headlight?

4 A. Well, based on the documents we had  
5 prior to these 13,000 boxes that I referred to, I  
6 would feel comfortable in saying we didn't have it  
7 in any of those documents. Whether they're in  
8 these 13,000 boxes, I don't know. We certainly  
9 haven't discovered it yet.

10 Q. Okay. Actually I mis-spoke earlier.  
11 I guess there's only one previous owner, Flexivan,  
12 that you've identified here.

13 Do you have any more knowledge about  
14 Flexivan's operation?

15 A. I don't, other than what's in there.  
16 And again, I would venture to say that that's  
17 second or thirdhand hearsay.

18 Q. Do you know or remember where that  
19 information came from, that Flexivan operated a --

20 A. I can't say specifically where it  
21 came from, only generally that it's some sort of  
22 secondhand information. And as part of our  
23 continuing fact investigation, it might be a value  
24 to us to try to pin that down, which I think we're  
25 trying to do. To date we don't know anymore than

1 what's there.

2 Q. Is this information that was  
3 provided, at least intermediarily by your  
4 paralegal?

5 A. I can't -- I don't think so. I think  
6 that might be part of Mr. Cunningham's fact  
7 investigation.

8 MR. CUNNINGHAM: In the interest of  
9 time, there is a railroad museum, I believe, in  
10 Elkhart and elsewhere; a lot of these things are  
11 public information that are available to everyone.  
12 They pay a small fee and buy a ticket, I think.

13 Q. Have you reviewed the contents of the  
14 railroad museum?

15 A. Not directly, no, I haven't.

16 Q. Has the company reviewed them?

17 A. Not to my knowledge, except as part  
18 of our fact investigation in this case and perhaps  
19 other cases.

20 Q. And is that part of the information  
21 that's been turned over in response to these  
22 interrogatories, the document request?

23 A. To the extent we have reviewed those  
24 documents and to the extent it's produced  
25 information responsive, it's included in here,

1    yeah.

2            Q.    Okay.    Turning to the paragraph 4  
3    within that response.    Is it true that you have no  
4    evidence of any releases or disposal of any types  
5    of hazardous substances?

6            A.    That's the extent of my knowledge.  
7    Again, the fact investigation is ongoing in this  
8    case.    I know there have been allegations made in  
9    the government lawsuit concerning a spill at the  
10   site, et cetera; my understanding of the fact  
11   investigation is that it's failed to verify the  
12   fact that there was a spill.

13            And I believe we've discovered  
14   evidence that at least suggests the spill never  
15   happened, certainly not the way it's alleged in the  
16   government complaint.    And although it's impossible  
17   to prove a negative, I suppose, all the evidence I  
18   have or has been made available to me is that this  
19   alleged spill didn't happen.

20            Q.    What evidence is that?

21            A.    Interviews of employees who were at  
22   the site.    Primarily there's no documentary  
23   evidence, as I understand it, either in the  
24   possession of the government or Conrail or in our  
25   possession which suggests that there was a spill

1 and a cleanup, and appropriate responses from local  
2 authorities like fire, police, et cetera. So it's  
3 that kind of evidence.

4 Q. What steps did you take to determine  
5 whether any evidence existed? It sounds like you  
6 did a document review particular to that question.

7 A. Well, I looked specifically at the  
8 documents you've produced, that is the government  
9 and Conrail, to see if there's any documentary  
10 evidence of what you alleged, and I found none.  
11 Mr. Cunningham and his firm has conducted some fact  
12 investigation, informal fact investigation,  
13 interviews of people who might have been connected  
14 to the yard or worked there, et cetera. That  
15 informal fact investigation has revealed no  
16 evidence of this alleged spill. That's what I'm  
17 referring to.

18 Q. When you say that there's no  
19 documentary evidence, you're referring to documents  
20 provided by the United States and/or Conrail and  
21 not to those documents that are in the warehouse --

22 A. To the extent that we have been able  
23 to look at documents in our possession, I explained  
24 to you how we are going through documents in our  
25 possession, they have revealed --

1 Q. I realize we're in a hurry to get  
2 through this.

3 A. I'm answering your question as fully  
4 as possible. I would appreciate it if we don't  
5 repeat questions.

6 Q. I know you're an attorney; for the  
7 purposes of the court reporter, I would appreciate  
8 it if you would let me finish my questions before  
9 you answer. I know she has trouble when two people  
10 are speaking at once.

11 A. Go ahead.

12 Q. Thank you. All right.

13 MR. CUNNINGHAM: Are you having any  
14 difficulty?

15 (Off the record.)

16 BY MR. JAFFE:

17 Q. Conrail has produced a vast array of,  
18 among other types of documents, unusual occurrence  
19 reports, which indicate releases of hazardous  
20 substances have occurred several times a year, not  
21 necessarily carbon tetrachloride or TCE, but of  
22 different types of hazardous substances.

23 Have you reviewed the documents in  
24 Philadelphia or elsewhere to determine whether Penn  
25 Central has similar records?

1           A.    Is there a time frame here of the  
2 question?

3           Q.    Well, during Penn Central's  
4 ownership, obviously.

5                   MR. CUNNINGHAM: Well, that helps  
6 the witness, because that was rather broad.

7           A.    First of all, all the documents of  
8 that operational nature were conveyed to Conrail in  
9 1976. I referenced these 13,000 boxes that kind of  
10 came back to us in Conrail's document retention  
11 program. There are people looking at them as we  
12 speak. No documents similar to those you've just  
13 described have been discovered.

14          Q.    Are they part of the assignment of  
15 the people who are looking at the documents --

16          A.    Their assignment is pretty simple.  
17 As they go through and if there's anything that  
18 mentions Elkhart or some other site that is of  
19 ongoing litigation concern, they should pull it  
20 out.

21          Q.    So they're pulling all documents that  
22 say Elkhart on them?

23          A.    If there are any, and I can't tell  
24 you that there are. I'm not aware of any.

25          Q.    I'm sorry. Is it their assignment to

1 pull all documents that say Elkhart on them, no  
2 matter what they say?

3 A. If they have any reference to the  
4 Elkhart Yard, yes.

5 Q. In your response to interrogatory  
6 number 5, you refer to a spill of fuel oil.

7 A. Uh-huh.

8 Q. Which you do not refer to in your  
9 response to interrogatory number 2. Assuming that  
10 that is an omission, I'm curious to know if there  
11 are any other omissions that you may have --

12 A. I'm not aware of any.

13 Q. Am I correct in assuming that that's  
14 an omission?

15 A. I wouldn't agree with you. I  
16 understand your question, and the answer is no.

17 Q. Is fuel oil not a hazardous  
18 substance?

19 A. I think it depends, I think, on the  
20 type, how much was released, et cetera. And  
21 without knowing the specifics, I can't answer your  
22 question anymore fully.

23 Q. What specifics would you need to  
24 know?

25 A. The type of fuel oil involved, the

1 chemical makeup of the fuel oil, how much was  
2 spilled, if it was contained.

3 Q. Is the amount relevant to whether  
4 it's a hazardous substance?

5 A. Well, again, more the amounts in  
6 relationship to its chemical compound and what it  
7 might have been combined with at the time.

8 Q. Are there types of fuel oils that are  
9 not hazardous substances?

10 MR. CUNNINGHAM: Well, I'm going to  
11 object to that, Peter, because clearly this witness  
12 is not an expert in that area.

13 MR. JAFFE: I'm only asking for a  
14 clarification of his answer.

15 A. We're getting off on a tangent. If  
16 you want to characterize it as an omission, I don't  
17 agree with it, but the answer to your question is,  
18 no, there are no other omissions, to my knowledge.

19 Q. Your response brings up to me, at  
20 least, that you are characterizing hazardous  
21 substances in some narrow manner that may allow you  
22 to not identify spills or releases of hazardous  
23 substances.

24 MR. CUNNINGHAM: That's an editorial  
25 characterization.



1           A.    I don't know the definition of  
2 hazardous substance in your interrogatories.

3           Q.    It's a question.  These are your  
4 responses, the instructions are not reproduced  
5 here.

6           A.    Can you define hazardous substance?

7           Q.    They are defined as they are defined  
8 in --

9           A.    We will review it again, and if we  
10 haven't included anything that fits that  
11 definition, we will.  To my knowledge, the answer  
12 to interrogatories are complete and they don't  
13 contain any other omissions.

14          Q.    Let me direct your attention to  
15 interrogatory number 3, please, I'll ask you to  
16 review that.

17          A.    All right.  I reviewed it.

18          Q.    Okay.  Your response here refers to a  
19 materials and supply inventory?

20          A.    Yes.

21          Q.    And where is that document located?

22          A.    Well, to the extent it exists, it  
23 would be included in our records in Philadelphia.

24                MR. JAFFE:  To my knowledge, that  
25 document has not been produced and I would request

1 that document be produced, please.

2 MR. CUNNINGHAM: I think I've made  
3 that rather clear, that you are welcome to the  
4 warehouse, and we are not going to search every  
5 document in that warehouse to try and come up with  
6 something like this.

7 Q. So this -- I'm sorry, maybe I  
8 misunderstand the response here. You've identified  
9 a document, but you do not have it, sort of in  
10 hand, it's somewhere buried?

11 A. No. You're misreading the response.  
12 The response is that part of the conveyance, as I  
13 told you, in 1976, one of the things the railroad  
14 had to do was create these inventories. So  
15 generally speaking these inventories were created  
16 and they were given to Conrail as part of the  
17 conveyance.

18 Like a transaction, you sell a  
19 business, you get inventory of assets; well,  
20 Conrail was given inventories of what existed  
21 throughout the railroad system, including this  
22 yard, because it was specifically conveyed to  
23 Conrail.

24 So the answer tells you that. I do  
25 not know if the actual inventory to Elkhart exists

1 in our possession or if it is just in Conrail's  
2 possession. I don't know if Conrail has it, if  
3 they produced it. But as Mr. Cunningham said,  
4 under Civil Rule 34, you're welcome to have access  
5 to these documents to try and find it.

6 I have not seen it. I don't know, as  
7 I said, if it exists specifically with respect to  
8 this site.

9 MR. CUNNINGHAM: Another way, maybe  
10 a little shorter way for you, because I would like  
11 to save you time and be as cooperative as possible;  
12 Conrail probably has those documents and you could  
13 get them from Ms. Landever, perhaps.

14 MS. LANDEVER: How thoughtful.

15 MR. CUNNINGHAM: We would like to be  
16 as helpful as we can.

17 BY MR. JAFFE:

18 Q. So you have taken no other steps to  
19 locate this particular document than the general  
20 document review that you described earlier?

21 A. I think that's accurate, yes.

22 Q. Okay. The last sentence of that  
23 response states; "Penn Central's beliefs do reflect  
24 no" --

25 A. Would you please mind directing me to

1 a page, please?

2 Q. I'm sorry. I'm on page 4 the last  
3 sentence of the response to interrogatory number  
4 3.

5 MR. CUNNINGHAM: You're referring  
6 to, "Penn Central believes that this document  
7 reflects no hazardous substances were at the  
8 Elkhart Yard or remaining at the Elkhart Yard at  
9 that time;" that's the question?

10 MR. JAFFE: That's the statement  
11 that I'm referring to.

12 BY MR. JAFFE:

13 Q. If you do not have the document or  
14 have not seen the document at hand, what is the  
15 basis that "we believe" --

16 A. My assumption is it would be some  
17 sort of secondhand information.

18 Q. Do you know what the basis of that  
19 belief is, or you're just assuming?

20 A. I'm assuming it's secondhand  
21 information that somebody has told us. That's my  
22 best recollection.

23 Q. At the time that you signed this  
24 verification, did you know what the basis of that  
25 belief was?

1           A.     I don't know the answer to that  
2 question. At the time I signed the verification,  
3 as I state in it, the information was supplied from  
4 a variety of sources and we were making an effort  
5 to give you everything we knew; whether reliable,  
6 hearsay, thirdhand, et cetera, which is our  
7 understanding of the spirit of discovery. And it's  
8 what we try to do in responding to the  
9 interrogatories.

10           Q.     Let me just see if I understand what  
11 the verification was, because I'm not familiar with  
12 the term verification.

13                     Is that the signing by a fact  
14 witness?

15                     MR. CUNNINGHAM: Let me refer you to  
16 this little book here called the Federal Rules of  
17 Civil Procedure. And this witness is not here to,  
18 although he is a professor at the University of  
19 Cincinnati Law School, here to lecture you or tell  
20 you what that rule is. You should know what that  
21 rule says.

22                     MR. JAFFE: The rule says --

23                     MR. CUNNINGHAM: Why are you asking  
24 a question that you know the answer to?

25                     MR. JAFFE: I don't ask questions

1 that I know the answer to. I am asking -- what I  
2 stated was, I am unfamiliar with the term  
3 verification, that the Federal Rules require that  
4 the responses to interrogatories and document  
5 requests be signed by a fact witness as to their  
6 accuracy.

7 BY MR. JAFFE:

8 Q. And I'm asking, that is in fact my  
9 question, as to whether this verification is in  
10 compliance with that requirement?

11 A. We believe it is.

12 Q. Thank you. I just wanted to confirm  
13 that. Let me turn your attention to interrogatory  
14 number 4, please. Ask you to review that.

15 A. I've reviewed it.

16 Q. All right. Among other things, this  
17 interrogatory request asks for identification of  
18 the cleaners, and as I understand it, as it's been  
19 described to me in the past, your review of  
20 documents in Philadelphia is based on key words,  
21 comparing it to someone doing a Lexis search?

22 A. That's correct. The analogy I  
23 suppose is roughly accurate.

24 Q. Are you the person who is primarily  
25 guiding that research or directing that research --

1 A. Well, the old records --

2 Q. -- of the documents?

3 A. As they pertain to this lawsuit, yes.

4 Q. Well, you described before that they  
5 were, the people doing it were requested to pull  
6 any documents that had Elkhart on them; were they  
7 given any --

8 A. The reference to Elkhart Yard, I  
9 think.

10 Q. Were they given any more direction  
11 than that?

12 A. That is about as broad as we could  
13 make it, I think; the answer is, no.

14 Q. Were they asked to pull general  
15 documents that would refer not specifically to the  
16 Elkhart Yard, but specifically to use of cleaners  
17 in the system, in the Penn Central system?

18 A. I'm not aware, outside of what's been  
19 disclosed to you in this answer, that there were  
20 documents like that or categories or key words.  
21 But as I understand your question, the documents  
22 you're referring to I see as a subset; in other  
23 words, there would be a general caption or  
24 reference to Elkhart, and as a subset of those  
25 documents there would be documents dealing with

1 solvents and cleaners, et cetera.

2 I think we've answered specifically  
3 the kinds of documents that were in existence at  
4 one time that would be responsive to you, and I'm  
5 assuming we've produced what we have. Is that  
6 accurate?

7 MR. CUNNINGHAM: Correct.

8 Q. So in paragraph number 1 in your  
9 response to this interrogatory, when you identified  
10 the material supplies handbook, for example, that's  
11 similar to the identification before of a document  
12 that you understood or understand to have existed  
13 but don't necessarily have at hand?

14 A. Correct. I don't read the response  
15 as saying that. I think we did produce whatever  
16 version or copies of the material and supply  
17 handbook we had to you. So everything that is in  
18 our possession that we know of has been provided to  
19 you.

20 Let me explain a little bit further  
21 in responding to these interrogatories. Again,  
22 there is no current institutional knowledge for the  
23 reasons I've explained to you. We don't have on  
24 our staff the engineer or material handler who  
25 worked at the yard, et cetera, at this time frame.



1                   We have to go back into our records,  
2 most of which were conveyed to Conrail in '76  
3 dealing with the operations, and try and find  
4 information that's responsive. To the extent we  
5 find something, there's a part of a document or  
6 handbook, et cetera, we give it to you. That's  
7 been my instruction to our employees and my  
8 instruction to Mr. Cunningham.

9                   So everything, to the best of my  
10 knowledge, my instructions have been, everything  
11 I've seen with respect to these answers to  
12 interrogatories has been provided to you. It  
13 serves no purpose, I believe, in any litigation,  
14 especially this kind of litigation to hide the  
15 ball. If it exists, and it's in a document, you  
16 have it, period.

17                  Q.     All right.

18                  MR. CUNNINGHAM: Another thing I  
19 might add without burdening the record, but we've  
20 objected to all these interrogatories, again, and  
21 we didn't do it frivolously when we added after the  
22 objection, "this interrogatory is overbroad,  
23 burdensome and seeks information which is  
24 impossible for Penn Central to provide," and we  
25 really mean that.

1                   Because we haven't been in business  
2 for some 20 years, in the railroad business, so it  
3 is particularly burdensome for us who have turned  
4 over by law these records to a very well run  
5 company, Conrail, who you could get this  
6 information from very easily, and I'm sure they  
7 probably have that. But I understand your need to  
8 cover all bases here.

9                   MR. JAFFE: As you probably know,  
10 we've requested this information from Conrail. So  
11 we've taken that step. However, now that you bring  
12 that up, let me just ask you for the record, what  
13 exactly that means, "impossible for Penn Central to  
14 provide," you just mean that it is not  
15 overburdensome or really overburdensome?

16                  MR. CUNNINGHAM: I believe practical  
17 to the point where a reasonable judge or the law  
18 would not require a person to do something when  
19 that information is available, and especially from  
20 other sources, much cheaper to obtain and so on.

21                  THE WITNESS: Let me try and clarify  
22 it a little bit further. To the extent these  
23 documents existed at PCTC in April of 1976, by law  
24 the Regional Rail Reorganization Act, they were  
25 given to Conrail, period. So they're impossible to

1 produce from that perspective, that they're not in  
2 our possession and haven't been since April 1,  
3 1976.

4 Now, we have already discussed the  
5 fact that Conrail was going to destroy a wide  
6 variety of records. I don't know whether any of  
7 these records which we've now reasserted possession  
8 of because Conrail was going to destroy them, any  
9 of those records referenced in this interrogatory  
10 are included in those 13,000 boxes. But we have  
11 stated that pursuant to Rule 34, they have been  
12 categorized for you and we will make them available  
13 to you when you want to look at them.

14 But, and I'll also add that our  
15 review of those documents has not revealed any  
16 information responsive to interrogatory number 4.

17 Q. Okay. Let me just get a couple more  
18 questions about this review. When did it begin?

19 A. I don't know precisely, but my guess  
20 is that sometime in the last eight to nine months.

21 Q. Approximately, how many boxes have  
22 been reviewed?

23 A. I think I direct your attention to  
24 paragraph 3 in our response, the number is, you  
25 know, several thousand boxes.

1 Q. So you're referring down to paragraph  
2 3, about 2,000 boxes have been reviewed?

3 A. That's correct. I think at the time  
4 that was probably accurate.

5 Q. Okay. That particular paragraph also  
6 referred to only 2,800 boxes of accounts payable  
7 records and at least to me suggests that those  
8 2,000 boxes are solely accounts payable records, is  
9 that correct, that's all of them that have been  
10 reviewed?

11 A. I'm sure that's true.

12 Q. As they're making their way, the only  
13 things that have been reviewed are accounts payable  
14 records?

15 A. I think there maybe other things.  
16 When you look at the categories of documents, you  
17 can draw your own conclusion. Our conclusion was  
18 that it's more than likely that, that relevant  
19 information would be in those accounts payable  
20 records as compared to employee records or claims  
21 from the bankruptcy, et cetera.

22 I want to also, we will not limit you  
23 to a particular category; if you think there's a  
24 category of records which will be more fruitful,  
25 you're welcome to look at them.

1           Q.     Eight to nine months ago predates our  
2     discovery request; is that correct?

3           A.     I think I told you early on in the  
4     deposition that there are many lawsuits pending  
5     against us, so a lot of them have to do with old  
6     railroad operations. We're reviewing those records  
7     not just for purposes of this litigation, but other  
8     litigations.

9           Q.     Was this research altered in any way  
10    after receiving our discovery request, or in  
11    response to our discovery request?

12          A.     In response to that people were told  
13    to look for the Elkhart Yard. Now, we may have  
14    been doing that in anticipation of litigation, not  
15    specifically your document request, but corporation  
16    review their own records to find evidence helpful  
17    to them as well as to respond to discovery. It may  
18    have been going on well before your request. I  
19    don't know.

20          Q.     Okay. What I'm getting at is: You  
21    maybe had this ongoing request because of various  
22    litigations, you got our discovery requests, you  
23    said, oh, guys, they're asking for X and/or Y that  
24    we haven't been asking about, and therefore we're  
25    going to alter the instruction to the people we

1 have doing the material research?

2 A. No, no. You'll recall the breadth of  
3 my instructions, I instructed the personnel to pull  
4 every document that referred to the Elkhart Yard,  
5 so anything you ask would be a subset of those  
6 documents. Do you understand?

7 Q. I do understand your response.

8 A. If you have a follow-up question,  
9 I'll be glad to answer that.

10 Q. I don't want to repeat my questions  
11 per your request.

12 A. I will entertain from you, did you  
13 want me to ask them for a broader instruction for  
14 review, I can't think of any.

15 Q. For example, did you ask them, pull  
16 all documents that say carbon tetrachloride on  
17 them?

18 A. No. All documents that reference the  
19 Elkhart Yard.

20 Q. There may have been a document that  
21 said something with carbon tetrachloride that was  
22 not pulled?

23 A. There may have been, but I would say  
24 very, very unlikely.

25 Q. And that is based on what?

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1           A.     Based on the kinds of information it  
2 is my understanding that are contained in these  
3 documents. And any documents that referenced  
4 carbon tetrachloride specific to the Elkhart Yard  
5 would have been pulled.

6           Q.     All right. But these documents were  
7 primarily accounts payable records, correct?

8           A.     That's true.

9           Q.     Okay. This is probably a  
10 typographical error, I wanted to clarify: The last  
11 four words of paragraph 3 simply just say,  
12 "reviewing purchase order information." I want to  
13 make sure that was just a typographical error.  
14 Again, you'll have to help. Still on response  
15 number 4, the last four words of paragraph 3.

16          A.     It appears to be a typo to me.

17          Q.     I just wanted to make sure there  
18 wasn't some information that was missing. Let me  
19 refer you to the next interrogatory response number  
20 5 and ask you to review that, please.

21          A.     I've reviewed it.

22          Q.     Before we turn to that, let me ask  
23 you one hopefully final question about the material  
24 review. You stated it had been some time since you  
25 had received a report from the document review. Do

1 you know when that was?

2 A. I don't know.

3 Q. Do you know if it would be this  
4 March, 1994 date or since then?

5 A. I'm sure my instructions both to Mr.  
6 Cunningham and my paralegal were to touch base  
7 obviously with the people during the review to see  
8 if there was anything that would be responsive to  
9 this. But I don't know the date of the last report  
10 to me on what was happening. Usually the reports  
11 are usually made when I look at the expenses that  
12 we're incurring and call up and say, is this  
13 bearing any fruit, and try to do a cost benefit  
14 analysis.

15 Q. Is it possible, giving me an  
16 approximate time; was it a month ago, six months  
17 ago?

18 A. I really don't remember. I can  
19 assure you they were consulted in the course of  
20 trying to prepare the responses to this discovery  
21 request.

22 Q. Okay. Is it possible for you to find  
23 the answer to that question during the break?

24 A. No.

25 Q. Why is that?



1           A.     It's not possible. I have no  
2 recollection of it.

3           Q.     Do you have any records?

4           A.     I would not have any written -- these  
5 would be oral reports.

6           MR. CUNNINGHAM: He's stated he  
7 doesn't remember.

8           Q.     What types of oral reports do you  
9 get?

10          MR. CUNNINGHAM: I think he's  
11 described that.

12          A.     I don't understand your question.

13          Q.     It's a document review, one would  
14 assume what you would get is the documents that  
15 have been pulled. Since you're telling me --  
16 telling me you get oral reports, I'm unclear as to  
17 what those oral reports would be.

18          A.     Those would be reports; for example,  
19 there might be an inquiry from me either directly  
20 or through part of my staff, have you discovered  
21 any documents referring to X landfill, the report  
22 would come back, no, we have not discovered or yes,  
23 we have and they will be sent to you. That's the  
24 nature of the oral report.

25          Q.     So perhaps I could ask my question a

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1 different way: When is the last time you received  
2 documents relative to the Elkhart Yard?

3 A. I don't know the answer to that. I  
4 would assume it would be -- the last time would  
5 have been at the time we last produced documents to  
6 either you or Conrail.

7 Q. Okay.

8 A. As I explained to you, when we find  
9 fact documents responsive to your interrogatories,  
10 I send them to you or direct people to send them to  
11 you. I don't keep them and only send part of them,  
12 they're all sent to you.

13 Q. Okay. On page 6 at the bottom of  
14 your response, paragraph number 1, you do refer to  
15 an oil spill, we talked about this previously. And  
16 this states that you have accounts payable records  
17 indicating that there was an oil spill?

18 A. I see that reference, yes.

19 Q. Do you have any other indications of  
20 that oil spill?

21 A. That would be the extent of it, to  
22 the best of my knowledge.

23 Q. So you don't know anything more about  
24 the oil spill other than there was money paid for  
25 it?

1           A.     That's true.

2           Q.     In the middle of the interrogatory  
3 number 5, sort of one-third of the way down on page  
4 6, it requests the identity of the individuals  
5 responsible for and then gives a number of things.

6                     What steps, if any, were taken to  
7 determine the identity of those individuals?

8           A.     I think as I explained to you  
9 already, the process, because we have no  
10 operational people employed by our company from  
11 that period of time and no people involved in the  
12 operation of the railroad, we go back to the  
13 documentary record and try and find references  
14 responsive to your interrogatories or anyone else.

15                     When we find a reference, in this  
16 case it was an accounts payable record, which kind  
17 of suggested some cleanup activity, if there's a  
18 name associated with that record, it's produced to  
19 you, obviously, along with the record and it's  
20 identified in that way. If there are no names  
21 identified, there's nothing else we can do to try  
22 and identify individuals.

23           Q.     And we've already determined that you  
24 did not review employee records to determine the  
25 response to this question?

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1           A.   That's correct. But they are  
2   available for your review.

3 Q. I'm just a little unclear as to your  
4 request for a break. Do you need to be somewhere  
5 at 12:00?

6           A.     I need to be at a meeting at 12:00.  
7 We have about three or so more minutes if you would  
8 like. And then I would like to reconvene, just to  
9 be safe, about 2:15.

10 MR. JAFFE: Actually this is a good  
11 stopping point. So we'll stop here.

12 MR. CUNNINGHAM: What time?

13 MR. JAFFE: Let's break now, and  
14 2:15, that's fine.

15 (Brief recess.)

16 BY MR. JAFFE:

17 Q. I would just like to return for a few  
18 minutes to a couple questions about the document  
19 search and to some of the things that you said  
20 about it in the responses.

21 Just for clarification: The 2,800  
22 boxes of accounts payable that are referred to in  
23 the responses, is that a subset of the 13,000 or  
24 15,000 boxes in Philadelphia?

25 | A. Yes.

1           Q.     Okay.    Could you tell me who is  
2 performing this review?

3           A.     There are two individuals.    I would  
4 have to look at their names, who do this, and show  
5 up at our records center and do it.   One is, his  
6 last name is Fisher and the other -- he's a male,  
7 there's a woman who does it as well.   We'll provide  
8 those to you.

9           Q.     Do you have those available in the  
10 offices here?

11          A.     I don't know.   They may be at the  
12 records center.   I would have to find out who is  
13 processing them, how they get paid.   If we're  
14 processing those here or getting processed there,  
15 we'll look for them.

16          Q.     Who gives you these oral reports that  
17 you described earlier?

18          A.     Well, it might be gathered by my  
19 paralegal, in other words, or my secretary in which  
20 I say, call the records center and find out if  
21 there's been any documents which mention X  
22 landfill, for example.   And what will come back,  
23 the reports will come back, yes or no.   If the  
24 report says yes, I've already explained I have the  
25 documents sent to me or outside counsel.

1 Q. It's one of these two people;  
2 your secretary or paralegal call?

3 A. Yeah. I think, although I would have  
4 to ask her who exactly she calls. I don't know if  
5 there's more than those two or not.

6 Q. Is there any sort of index to these  
7 documents that's created during the document  
8 review?

9 A. I don't know. I don't know.

10 Q. Do you know what the method would be  
11 when you or your paralegal or secretary call  
12 whoever it is that you call to determine whether X  
13 landfill was named; how they make that  
14 determination?

15 A. How the people -- I don't know. I  
16 assume it's by recollection and then they have been  
17 instructed to pull certain documents so they can go  
18 back and look at those documents, that's my  
19 assumption.

20 Q. So you have not gotten any sort of  
21 updated reports in preparation for this deposition?

22 A. The point is I don't get written  
23 reports on a daily basis. They're on an as-needed  
24 basis.

25 Q. I understand.

1           A.     And then if documents surface related  
2 to a particular piece of litigation or something,  
3 as I said, they're sent to me and/or outside  
4 counsel.

5           Q.     So you didn't go back to these people  
6 to get an oral report in preparation for this  
7 deposition?

8           A.     For this deposition, no. That's  
9 correct.

10          Q.     We've had deposition testimony  
11 previous to this that indicate there's some  
12 documents which are stored in Penn Central's  
13 possession in a facility in Indiana; are you aware  
14 of those?

15          A.     No, I'm not. What kind of records?

16          Q.     Well, among others, claims records  
17 for either loss of lading or personal injury?

18          A.     Just general records along those  
19 lines -- Are you suggesting it's related  
20 specifically to Elkhart?

21          Q.     Are there records in Indiana?

22          A.     I just told you I don't know of any  
23 records. I'm trying to find out. This is the  
24 first I've ever heard of some record storage in  
25 Indiana.

1           Q.    As I recollect the deposition  
2 testimony, we've asked: Are there any relevant  
3 claims records, for example, and the person has  
4 indicated that there may be some records in a  
5 facility in Indiana.

6           MR. CUNNINGHAM: Can you help me a  
7 little bit, Peter; who was that? I'm not saying it  
8 didn't happen, I just don't recall.

9           MR. JAFFE: As I recollect, I don't  
10 remember their names, but there are people we have  
11 deposed specifically to claims records. I think we  
12 talked to people who were employed about insurance;  
13 they had referred to records kept in a facility in  
14 Indiana.

15          MR. CUNNINGHAM: Let me suggest  
16 this, if you can go back and find the reference or  
17 the individuals that said that and pin it down,  
18 I'll be glad to see if we have any records in  
19 Indiana. I don't know of any.

20          A.    There may very well be Conrail  
21 records, but I have no knowledge and would be  
22 surprised to learn that we had some sort of record  
23 storage facility in Indiana; never heard of that.

24          Q.    To your knowledge, there's not even a  
25 facility there anymore?



1 A. No.

2 Q. Are you aware of any claims records  
3 for loss of lading for the period at Elkhart during  
4 Penn Central or New York Central's ownership?

5 A. I'm not. And if they exist, they  
6 would be in that group of 13,000 boxes, would be my  
7 assumption.

8 Q. Okay. Would the -- Would your answer  
9 be the same as to personal injury claims?

10 A. Can you be more specific? We  
11 certainly have files we maintain on, for example,  
12 asbestos and hearing loss personal injury claims,  
13 which we're dealing with. If you're talking about  
14 personal injury claims prior to 1976, other than  
15 those, my answer would be the same.

16 Q. As part of the -- I realize that you  
17 are not being presented here today to respond to  
18 paragraph 2 of our Rule 30(b)(6) deposition, and it  
19 refers to document retention policies. I want to  
20 ask you for most of the other questions -- I do  
21 just want to confirm that no one from Penn Central  
22 has gone to these people who are doing the document  
23 review to determine whether they have created an  
24 index or any other written records of their review  
25 of the documents?

1           A.     I haven't. I don't know if anyone  
2 else has.

3           Q.     In giving them their instructions,  
4 you have not instructed them to create such an  
5 index?

6           A.     No. It's more -- there's such  
7 massive amounts of documents, it's more, look and  
8 find a document, any document that's related to the  
9 X landfill, the Elkhart Yard, et cetera. There's  
10 just not enough time and it doesn't seem cost  
11 effective to me to index totally useless documents.

12          Q.     If some litigation came up as to some  
13 other rail yards, for example, you would have to  
14 start from the beginning?

15          A.     If it does. We wouldn't expect that  
16 to happen.

17          Q.     How I understand, from the conveyance  
18 documents and other documents, from conveyance --  
19 the company, the -- I'm sorry -- Strike that.

20                 As I understand the transfer of Penn  
21 Central's railroad operation to Conrail, Penn  
22 Central retained liability for any claims arising  
23 from the time of their ownership; is that correct?

24          A.     Well, that's incorrect.

25          Q.     Could you clarify that for me or

1 correct it for me?

2 A. Well, some claims liability was  
3 retained; some, they weren't.

4 Q. Well, for example, were they retained  
5 for personal injury claims?

6 A. Arising prior to April 1, 1976?

7 Q. Yes.

8 A. Yes.

9 Q. Is it your testimony that Penn  
10 Central retained no documents which would be  
11 relevant to possible future litigation arising from  
12 claims from injuries that happened prior to April  
13 1, 1976, but instead turned all those documents  
14 over to Conrail?

15 MR. CUNNINGHAM: Do you understand  
16 the question?

17 A. The question was very confusing.

18 Q. I can clarify for you if you're  
19 confused.

20 A. I think you asked me several  
21 questions.

22 Q. I meant only to ask you one  
23 question. I apologize. Previously you testified  
24 that you turned all documents relevant to railroad  
25 operations over to Conrail?

1           A.     Correct.

2           Q.     However, it seems to me that if Penn  
3 Central retained liability for certain things that  
4 may have occurred, whether personal injuries or  
5 otherwise, that may have occurred on the Elkhart  
6 Yard or other yards, that they may have retained  
7 some documents in order to defend future possible  
8 lawsuits.

9           A.     If claims were presented, they would  
10 be claims that were resolved either in the  
11 bankruptcy or after pursuant to the provision of  
12 the consummation order. I wouldn't consider those  
13 railroad operational documents, they would be claim  
14 documents.

15           Q.     Let me give you a hypothetical: On  
16 April 2, 1976 someone files a lawsuit for a severed  
17 limb that occurred March 30th, 1976.

18           A.     Yes.

19           Q.     Penn Central would retain liability  
20 for that; is that correct?

21           A.     Well, again, your question is too  
22 broad. Our position would be that that claim is  
23 probably discharged in the bankruptcy as having  
24 arisen prior to the consummation date. We could  
25 get into litigation over whether the claim arose

1 prior to the bar date or not. My position would be  
2 that we wouldn't be liable given the provision of  
3 the consummation order.

4 Q. Okay. However, except for that  
5 caveat that you would use that as a defense, you  
6 would otherwise be liable --

7 A. Again, a hypothetical, I don't know.  
8 Are you saying liability vis-a-vis Conrail?

9 Q. Liable vis-a-vis the plaintiff.

10 A. No, I don't know. It's impossible to  
11 answer your hypothetical. I've answered it the  
12 best I can. You're asking me hypothetically would  
13 we be responsible to or liable for something, and I  
14 guess it depends on all the circumstances of the  
15 case.

16 MR. CUNNINGHAM: Let me go off the  
17 record.

18 (Off the record.)

19 MR. CUNNINGHAM: I guess what we're  
20 trying to do is simplify matters. We've given you  
21 this letter, May 28th, we've offered you the right  
22 under the rules to get the information out of the  
23 warehouse that you want, and I don't know what else  
24 you would need there.

25 MR. JAFFE: I understand. I am

1 simply trying to determine -- It seems to me that a  
2 good lawyer would recommend that his client retain  
3 documents which may be relevant to future lawsuits,  
4 even if those lawsuits never arose. And that's,  
5 what I'm trying to get at, whether Penn Central did  
6 or did not retain those types of records.

7 MR. CUNNINGHAM: He's answered that  
8 question.

9 Q. If the answer is no, I would like to  
10 establish the answer is no or I don't know.

11 A. I'm not sure what your question is.  
12 Is your question; was the corporation advised to  
13 keep documents around that might be relevant in  
14 some future lawsuits, and was that advice given in  
15 1976? I don't know.

16 Q. The question: I really couldn't care  
17 about the advice, I just want to know whether they  
18 did or did not keep those records.

19 A. I don't know. I wasn't at the  
20 corporation in 1976, and there's no one here who  
21 was.

22 Q. Was Penn Central insured for personal  
23 injury claims that may have arisen at the Elkhart  
24 Yard prior to April 1, 1976?

25 A. My understanding of the insurance in

1 that period is sketchy, but I believe there was  
2 insurance in place, yes.

3 Q. Do you know the names of those  
4 insurance companies?

5 A. Over the years there have been  
6 various layers of insurance. We have been in  
7 litigation with insurance carriers, and the number  
8 totals around 110.

9 Q. One hundred and ten companies?

10 A. One hundred and ten, 120 carriers,  
11 yes.

12 Q. And would all these companies or the  
13 majority of them have relevance to incidents that  
14 may have occurred at the Elkhart Rail Yard?

15 A. I don't know. My guess is that a  
16 fraction of those companies would have policies  
17 that could potentially respond to that period of  
18 time.

19 Q. Do you have a list of those insurance  
20 companies or a file of those policies?

21 A. They can be provided to you. Sure.  
22 Have you asked for them in discovery? If you have,  
23 they should have been provided. If not, ask for  
24 them and they will be provided.

25 Q. You identified witness interviews

1 that -- which led you to believe that there was  
2 evidence that no spill occurred or no release of  
3 hazardous substance occurred during Penn Central's  
4 ownership; could you tell me who those witnesses  
5 were?

6 A. I don't know. Those were conducted  
7 by Mr. Cunningham in his fact investigation of this  
8 case, and I don't know the identity of those  
9 individuals. That's all.

10 Q. Do you know the substance of those  
11 interviews?

12 MR. CUNNINGHAM: Well, here's where  
13 we're getting into the area I'm going to object to  
14 this privilege information.

15 MR. JAFFE: And what is the  
16 privilege here?

17 MR. CUNNINGHAM: It's called  
18 attorney/client privilege.

19 MR. JAFFE: Well, I'm sorry. How is  
20 it attorney/client privilege, discussions you've  
21 had with --

22 MR. CUNNINGHAM: With my client.

23 MR. JAFFE: I was not asking about  
24 that. I'm sorry. You misunderstand. I was asking  
25 about the interviews that were conducted with



1 witnesses which gave rise to a belief that no spill  
2 occurred at the Elkhart Rail Yard.

3 MR. CUNNINGHAM: That's fine. If he  
4 knows the answer, he can give it to you.

5 MR. JAFFE: He indicated he does not  
6 know the answer. Have you --

7 MR. CUNNINGHAM: I think he  
8 indicated that he had had discussions with counsel  
9 in which this information was generated.

10 THE WITNESS: I can clarify if you  
11 want.

12 BY MR. JAFFE:

13 Q. Please.

14 A. All the information about these  
15 interviews have been given to me by Mr. Cunningham,  
16 he's investigated this case as he should, through  
17 informal fact investigation, interviewed numerous  
18 witnesses, et cetera; in addition, the  
19 attorney/client privilege, a lot of it is work  
20 privilege as well. If you want the identity of  
21 those names, I suggest you ask for them in a  
22 supplemental set of interrogatories and we'll  
23 either interpose the privilege and articulate why,  
24 or we'll give you the names.

25 If we have fact witnesses we're not

1 going to call as witnesses at trial, it may very  
2 well be protected by the work product privilege.

3 Q. First of all, I am asking for them,  
4 regardless of whether I already have asked for  
5 them. I believe that I have. I'm asking for them  
6 now.

7 A. A deposition is not the appropriate  
8 place to ask for documents. If you want to serve a  
9 document request, do so.

10 Q. First of all, just for the record --  
11 I'll wait. I appreciate that you are an attorney,  
12 and from what I understand, a very skillful  
13 attorney; however, I would appreciate -- you are  
14 here as a fact witness, and I would appreciate it  
15 if you would allow your attorney to make the  
16 objection.

17 A. As I understand the rules, I'll  
18 answer the question any way I feel appropriate.  
19 You can follow-up any answer I make. Please feel  
20 free. I'll answer the question as I see fit.

21 Q. That's fine. I was not requesting a  
22 document. I don't believe that I asked for a  
23 document, number one; and the appropriateness of  
24 asking for a document, I'm not going to discuss at  
25 this time.

1                   However, what I did ask for at this  
2 time is the names of persons who have been  
3 interviewed --

4                   MR. CUNNINGHAM: This is where we  
5 stop. This is where we cease. What you're in  
6 effect doing is trying to get from files of mine  
7 things that we have developed. And you're simply  
8 not permitted to do that, because it's work  
9 product. And we are not going to allow you to do  
10 that.

11                  MR. JAFFE: As I'm sure that you're  
12 aware --

13                  MR. CUNNINGHAM: We object to it.  
14 And I don't want to spend all day going through the  
15 rest of this. I want to make that very, very clear  
16 to you.

17                  MR. JAFFE: I understand you have an  
18 objection, it's crystal clear to me. However, what  
19 you would have to give us from the privileged list  
20 would certainly include the names of the  
21 interviews. I had not asked for the subject of  
22 that interview, I am essentially asking for the  
23 names of the people that you interviewed.

24                  MR. CUNNINGHAM: I think we have  
25 already given you the names of the people. Mr.

1 Cioffi answered they were interviewed by me.

2 MR. JAFFE: Where do I have them?

3 MR. CUNNINGHAM: In answers to  
4 interrogatories and supplements to interrogatories.

5 MR. JAFFE: Please refer to exhibit  
6 number 3, the only answers to interrogatories, and  
7 refer me to the place where you indicate the names  
8 of these witnesses.

9 MR. CUNNINGHAM: I do not have that  
10 information now. I am representing to you as  
11 counsel for this company that we have furnished to  
12 you names of people that we interviewed, that was  
13 one of the questions that was asked. And you've  
14 got that. And Conrail asked and we gave it to  
15 them. So don't go over the same ground.

16 MR. JAFFE: Okay. Are you telling  
17 me now that you have not interviewed anyone other  
18 than those people who you have turned over to us?

19 MR. CUNNINGHAM: It would depend  
20 upon the time those were given to you. I don't  
21 know. I'm not here to be deposed. Go ahead and  
22 ask the witness the questions.

23 MR. JAFFE: I asked the witness the  
24 question, he says he asked you.

25 MR. CUNNINGHAM: You're trying to

1 get the --

2 MR. JAFFE: I don't believe I asked  
3 counsel any question.

4 MR. CUNNINGHAM: You're trying --

5 MR. JAFFE: Let me ask my  
6 questions.

7 THE WITNESS: Go ahead and ask it.

8 BY MR. JAFFE:

9 Q. What are the names of the people who  
10 you have interviewed or Penn Central has  
11 interviewed or witnesses who have indicated to you  
12 that no spill or other leaks occurred at the  
13 Elkhart Rail Yard?

14 A. I don't know the names of those  
15 individuals. Mr. Cunningham and members of his  
16 office have conducted a fact investigation and they  
17 have reported to me they have uncovered individuals  
18 who will provide that testimony if needed. I don't  
19 know the names of them. I'm not even sure if the  
20 names were given to me; if they were, I've  
21 forgotten them. I literally am responsible for  
22 thousands of lawsuits. I don't remember the names  
23 of the witnesses in each lawsuit.

24 I suggest to you if you want those  
25 names, there's a discovery device for asking for

1 them. If we don't give them to you, we have to  
2 state why via an objection. I'm suggesting to  
3 you -- I told you, I don't know. Ask it in a  
4 supplemental interrogatory.

5 Q. As I understand it, you have  
6 testified earlier that you have prepared for this  
7 deposition in correspondence with Rule 30(b)(6),  
8 the Federal Rules of Civil Procedure; is that  
9 correct?

10 A. That's correct.

11 Q. And your answer right now is, I don't  
12 know; is that correct, to my last question?

13 MR. CUNNINGHAM: What question was  
14 that; to the question of witnesses interviewed?

15 A. The record speaks for itself. My  
16 answer is what it is.

17 MR. CUNNINGHAM: Record stands.

18 Q. Thank you. Of the 15,000 pending  
19 cases that you referred to before, do any other of  
20 those cases involve railroad operations?

21 A. I didn't say cases, they're claims.  
22 Do they involve railroad operations?

23 Q. Yes.

24 A. Yes.

25 Q. Do a substantial number or just a

1 few?

2 A. Well, a substantial number of that --  
3 of those, whatever number it is, are as I mentioned  
4 to you, asbestos related claims and hearing loss  
5 claims, both of which arise from railroad  
6 operations.

7 Q. Well, other than those, are there  
8 any --

9 A. Other than those, I would say the  
10 majority of the claims and cases deal with  
11 post-railroad operations.

12 Q. Approximately, how many cases are  
13 relevant to the document search that's being  
14 performed in Philadelphia, or claims?

15 A. I don't know the answer to that. I  
16 could guess, and if you want me to guess, it would  
17 be maybe ten or so.

18 Q. Can you name those other cases?

19 A. I cannot.

20 Q. Can you name a few of them?

21 A. Again, I would -- I'm concerned that  
22 I would confuse it with some other case. I really  
23 can't guess at it, I really can't.

24 Q. All right. Let me turn your  
25 attention to interrogatory number 7 on Exhibit 3.

1 A. I have it.

2 Q. All right. Could you review that,  
3 please?

4 A. I've reviewed it.

5 Q. Thank you. What steps did you take  
6 to determine whether you could identify any persons  
7 responsible for these very --

8 A. It's the very same procedure I  
9 described earlier this morning.

10 Q. So in conducting these witness  
11 interviews that we were talking about earlier, were  
12 any requests made to identify persons responsible  
13 for these activities?

14 A. I believe I answered this morning  
15 that, there are no individuals now employed by our  
16 corporation who were involved in the railroad  
17 operations at that point in time. So there's no  
18 one to ask. The information and knowledge we have  
19 available to us is historic in nature and  
20 documentary in nature and so; therefore, to repeat  
21 my testimony from this morning, we go back and look  
22 at those documents to see if names are identified,  
23 to see if sites are identified.

24 I've explained that to you, and it's  
25 exactly the same procedure here.



1           Q.     I understand.   What I'm asking about  
2 is:   You had also indicated that there had been  
3 some witness interviews which had indicated that no  
4 spill or release had occurred at the Elkhart  
5 railroad.   We discussed whether you knew the name,  
6 you said you did not know.

7                     As to those interviews of witnesses  
8 who, I gather, were not, or are not employed by  
9 Penn Central; was the question asked of those  
10 people whether they could identify any persons  
11 responsible for these activities?

12           A.     I don't know.   I didn't conduct those  
13 interviews and they seem to be far outside the  
14 scope of your interrogatory 7.

15           Q.     I'm just asking for -- I'm sorry; how  
16 were they outside the scope?

17           A.     You asked me to identify each person  
18 responsible in any way for supervising storage, et  
19 cetera, assuming you're asking about employees who  
20 -- employees of the Penn Central Transportation  
21 Company who were involved in those items, and as I  
22 told you, those people are no longer employed  
23 here.   As to other people who have been interviewed  
24 as fact witnesses, I don't know what they were  
25 asked.   I wasn't at those interviews.   I didn't

1 conduct them.

2 Q. You believe that -- You believe it's  
3 outside the scope of this interrogatory to  
4 determine the persons responsible for these  
5 activities at the rail yard at the time that Penn  
6 Central owned it?

7 A. That's not what I was responding to.  
8 The record will speak for itself. This deposition  
9 is what I was responding to. But you asked about  
10 people being interviewed, and in the fact  
11 investigation of this case outside of the  
12 employment of the company, I stated what I think is  
13 clear from interrogatory number 7, that was outside  
14 the scope of interrogatory number 7. We read that  
15 to mean that people that had been employed or are  
16 employed by the corporation.

17 Q. So if you interviewed a former  
18 employee for one purpose or another, and you asked  
19 him or her to identify people responsible for this  
20 and you got that information, that would be outside  
21 the --

22 A. We would disclose that.

23 Q. Outside the scope --

24 A. We would have disclosed that, if that  
25 scenario had happened. To my knowledge, it hasn't.

1 MR. CUNNINGHAM: You've asked the  
2 witness, I believe, Mr. Jaffe, whether or not he  
3 ever interviewed any of these former employees,  
4 he's said no. He's outlined again and again that  
5 the procedure was the same as he's described it  
6 this morning. You're going over the same area. We  
7 would like to cooperate with you, but you must  
8 recall that again, we're giving you a great deal of  
9 leniency.

10 We've objected to this interrogatory  
11 and we have an agreement between you and me that we  
12 would not interpose those objections in the  
13 interest of continuity here today. But please bear  
14 in mind that we are serious about the objection  
15 being overbroad, burdensome, and seeking  
16 information which Penn Central, being out of the  
17 business for over 20 years, is unable to provide in  
18 some cases. Please, don't continue this line of  
19 questioning.

20 MR. JAFFE: For the record, I will  
21 have to say that I believe your objection is  
22 certainly, to this question is, that you have no  
23 valid objection to this question.

24 MR. CUNNINGHAM: Save it for Judge  
25 Fuller when the time comes.

1 MR. JAFFE: For that purpose, to  
2 that extent, my feeling --

3 MR. CUNNINGHAM: It isn't going to  
4 help to fill the record with your arguments on an  
5 issue that is not to be raised today. We have  
6 things to do, let's get going. I am not intending  
7 to raise the issue.

8 MR. CUNNINGHAM: You are -- You said  
9 this is your feeling, I'm not interested in your  
10 feeling right now, nor is anybody else. Please  
11 proceed.

12 MR. JAFFE: I'm sorry if you're not  
13 interested in the deposition, however the  
14 deposition --

15 MR. CUNNINGHAM: I'm not saying I'm  
16 not interested in the deposition. You are twisting  
17 that around quite a bit, and I resent it. Go ahead  
18 and ask questions of this witness. He's answered  
19 most of these and you're merely trying to annoy us  
20 today. Please don't do it anymore.

21 MR. JAFFE: I'll do my best not to  
22 annoy you.

23 MR. CUNNINGHAM: Thank you.

24 MR. JAFFE: However, I've allowed  
25 you to make your statements on the record. I had

1 no intentions of going any farther. I'm going to  
2 do my questions, if you feel the need to object to  
3 them, despite our understanding, you are welcome to  
4 go ahead and do that.

5 MR. CUNNINGHAM: I said I will not  
6 do that. I am merely reminding you this witness is  
7 having -- he's answered the question and that's all  
8 I'm going to say.

9 MR. JAFFE: May we go off the  
10 record?

11 (Off the record.)

12 BY MR. JAFFE:

13 Q. Since I've lost the train of my  
14 questioning, let me just redirect your attention to  
15 page 7, paragraph 7 of your response. I'm just  
16 confused about this. I'm confused about the  
17 relevance of this statement to the question,  
18 perhaps you could elucidate me.

19 A. The relevance of what statement to  
20 what statement?

21 Q. I directed your attention to  
22 paragraph number 7 of your response. I'm curious  
23 to know what the relevance of that is to the  
24 interrogatory.

25 A. Well, the relevance is, you've asked

1 to identify individuals responsible for managing,  
2 supervising, et cetera. I think that paragraph  
3 attempts to tell you that these employees, to the  
4 extent they existed prior to April 1st, 1976, were  
5 no longer employees after that date and; therefore,  
6 there is no one to identify or contact, et cetera.  
7 I think that's what it tries to do and that's the  
8 relevance.

9 Q. Let me direct your attention to  
10 interrogatory number 8, please, and let me ask you  
11 to review the interrogatory and response.

12 A. I've reviewed it.

13 Q. All right. As I understand it, these  
14 records -- the records that are requested in the  
15 interrogatory are, to the extent that Penn Central  
16 has such records, are available in Philadelphia?

17 A. That's true.

18 Q. Could you give me the names of the  
19 persons who are responsible for keeping and  
20 maintaining these records, please?

21 A. Ray Jones. He's the custodian at the  
22 warehouse who is charged with their safe keeping.

23 Q. Are there any other persons?

24 A. No.

25 Q. Can you tell me why you did not give

1 me that name in response to this interrogatory  
2 response?

3 A. I don't see where you asked for it.

4 Q. The last phrase is, "each person  
5 responsible for keeping and maintaining these  
6 records."

7 A. Well, our answer is, first of all,  
8 that, to refer you back to interrogatory 4 in which  
9 we explained to you what documents might exist, and  
10 as I've explained to you earlier, these records to  
11 my knowledge don't exist because they were conveyed  
12 to Conrail in 1976. You asked me to the extent  
13 they might exist are they in Philadelphia, and the  
14 answer to that question is, yes.

15 But as we've explained to you in  
16 earlier answers to interrogatories, and as I've  
17 explained to you today, the operational records  
18 went with Conrail pursuant to the Regional Rail  
19 Reorganization Act.

20 Q. All right. Penn Central produced in  
21 response to these discovery requests, I think,  
22 several editions of a manual which gave regulations  
23 for site safety and so forth; did it not?

24 A. I believe so.

25 Q. So Penn Central must have had in

1 their possession such documents in order to turn  
2 them over --

3 MR. CUNNINGHAM: Let me point out to  
4 you we got those from Conrail.

5 MR. JAFFE: What do you mean you got  
6 them through Conrail?

7 MR. CUNNINGHAM: Through discovery.

8 MR. JAFFE: So you did not have  
9 those manuals in any other way?

10 MR. CUNNINGHAM: I can only try and  
11 answer your question, that's where they came from.

12 MR. JAFFE: One problem with these  
13 responses to interrogatories that at no time does  
14 Penn Central give us one single name. I am using  
15 this name because it's a name that clearly exists  
16 and is clearly responsive.

17 And I just want to understand why  
18 Penn Central did not give us this name in response  
19 to this interrogatory.

20 MR. CUNNINGHAM: Are you making an  
21 argument, making an editorial comment? Why don't  
22 you ask a question.

23 MR. JAFFE: It is a question.

24 MR. CUNNINGHAM: There's the  
25 question?



1           THE WITNESS: The documents you  
2 asked for in interrogatory number 8 don't exist.  
3 You came at the question much different, Mr.  
4 Jaffe. You asked me a hypothetical question; if  
5 they do exist, would they be in Philadelphia,  
6 that's what the record says. My response is, yes,  
7 sir, if they do exist, they're in Philadelphia. I  
8 don't think they exist in our possession, but if  
9 they do, that's where they would be. Then you  
10 asked me who maintains those records, and I gave  
11 you the name.

12           That's not the way the information is  
13 requested in the interrogatory. So don't try and  
14 compare the two, it's disingenuous and it's  
15 confusing.

16           Q. Is your answer to the question then  
17 that you did not believe that Ray Jones' name was  
18 responsive to this because you did not believe that  
19 such documents exist?

20           A. That's correct.

21           Q. What steps did you take to determine  
22 that such documents did not exist?

23           A. I reviewed the consummation order and  
24 the Regional Rail Restoration Order pursuant to  
25 which these documents were required to be

1 transferred to Conrail. You asked me the same  
2 question over and over.

3 There is a very important singularly  
4 unique event in the history of the course of this  
5 organization, by which all of this information was  
6 removed from our possession, that happened almost  
7 20 years ago. I don't know how much more plainly I  
8 can state that.

9 We are not the same company, we don't  
10 have the same recordkeeping system. We don't have  
11 access to that information. By this act of  
12 congress, it went to Conrail.

13 Q. Rather than getting into an argument,  
14 I'm going to move on.

15 Is it your position that you are not  
16 under an obligation to review documents in response  
17 to discovery requests once they were turned back  
18 over to you?

19 A. Are you asking me an academic  
20 question or do you want to put a time frame on it  
21 and identify the documents you're referring to?

22 Q. I think for several hours now we've  
23 been discussing among other documents, documents  
24 that have been turned over to you by Conrail and  
25 have now been stored in a warehouse in

1 Philadelphia.

2 Is it your position that it was not  
3 your responsibility to review those documents in  
4 response to these discovery requests?

5 A. That's not my understanding of our  
6 responsibilities under Civil Rule 34.

7 Q. What is your understanding of your  
8 responsibilities under Civil Rule 34?

9 A. That those documents could be made  
10 available for you for inspection at a reasonable  
11 time, place, and in a reasonable manner. We have  
12 an obligation to categorize them for you, which  
13 we've done.

14 Q. I'm sorry. How have you ever  
15 categorized them for us?

16 A. I've already told you.

17 Q. You're referring to the letter?

18 A. Yes.

19 Q. So you believe that categorizing  
20 what, under six or eight broad categories is  
21 sufficient to be responsive to Rule 34?

22 A. I believe it is, yes.

23 Q. All right. Let me turn your  
24 attention please to interrogatory number 10 and ask  
25 you to review that.

1 A. I've reviewed it.

2 Q. Thank you. Let me turn your  
3 attention to the top of page 10, please. That  
4 first partial paragraph, just for clarification,  
5 there's a phrase, "and Penn Central's search of  
6 relative documents," that's the same document  
7 search in Philadelphia that we've described  
8 previously?

9 A. I believe so, yes.

10 Q. And that is the basis of the phrase,  
11 "Penn Central does not believe such tests were  
12 performed"?

13 A. Again, as I explained to you, the  
14 procedure is we go back and look at what -- any  
15 records that might be available; to the extent they  
16 are available and if we find something, then we  
17 have to form our belief on that. We don't have any  
18 information about prior to that tests, is the  
19 bottom line. If we did, I would be happy to give  
20 them to you.

21 Q. Right. To be perfectly honest with  
22 you, what I'm trying to understand is whether  
23 that -- you've already stated that the document  
24 review is not complete. I just want to understand  
25 that your belief is based on an incomplete document

1 response and that you cannot state that belief with  
2 confidence --

3 MR. CUNNINGHAM: I think you're  
4 trying to have it come out a certain way, Peter.  
5 He's answered the question, you know.

6 Q. If it's true -- I mean, is it true  
7 that your belief is based on an incomplete document  
8 review?

9 MR. CUNNINGHAM: It's based on his  
10 verification in his interrogatory which is stated  
11 in writing.

12 Q. I would like you to answer my  
13 question, please.

14 A. It's based on what I told you our  
15 answers to interrogatories are based on earlier  
16 today. If you want to characterize that as  
17 incomplete, then that's your characterization. I  
18 don't know agree with it. It is certainly  
19 unnecessary under the rules to review documents  
20 which you have reason to believe are totally  
21 irrelevant in the hope or anticipation of finding  
22 something in them.

23 We're now talking about 13,000 boxes  
24 of documents that somehow might be responsive. I  
25 don't see the civil rules, specifically Rule 34,

1 imposing that obligation on us. We've discharged  
2 our obligation. The documents are available if you  
3 would like to look at them. But our belief is  
4 formed on everything we know based on that kind of  
5 investigation.

6 Q. But you have testified previously  
7 that there are 2,800 boxes of documents which you  
8 believe are relevant enough at least to search and  
9 that you have at least, as of last record in this  
10 response, searched 2,000 of them. That would leave  
11 800 of them. I just want to understand that your  
12 belief is based on the 2,000 boxes of documents  
13 that have been reviewed and not on the remainder of  
14 documents.

15 A. That's correct.

16 Q. And let me turn your attention to the  
17 following paragraph, also at the top of page 10.  
18 Let me just again confirm that that belief is based  
19 on the same document review?

20 A. And the other sources I mentioned  
21 earlier in my testimony.

22 Q. Such as witness interviews and so  
23 forth?

24 A. Sure.

25 Q. This belief that tests were

1 performed, have you determined any documents that  
2 would show the results of those tests?

3 A. Not to my knowledge. I think we've  
4 referenced this Cooper Chemical Company. To my  
5 knowledge, we don't have documents from them in our  
6 possession or any others related to this issue --  
7 It would surprise me if I did.

8 Q. I think we've seen in the documents  
9 that were produced to us in response to this  
10 discovery request some accounts payable for a  
11 Cooper Chemical --

12 A. You may have.

13 Q. -- for such tests. If such documents  
14 are -- were found, would that create any follow-up  
15 document searches to some of the other boxes of  
16 documents?

17 A. Again, it's a hypothetical question.  
18 If there were some facts discovered in these  
19 documents that might suggest another source, yeah,  
20 it would be followed up. But, again, we're working  
21 with the premise that operational documents were  
22 conveyed and taken out of our possession in 1976  
23 and those documents that have come back don't  
24 appear to contain anything that's at all relevant  
25 or even within the scope of relevancy of this

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1 lawsuit.

2 Q. Here you have identified documents of  
3 tests performed on oil/water separators.

4 A. Yes.

5 Q. Once you identified the existence of  
6 such documents, did you then go back and do other  
7 document searches for, for example, the results of  
8 those tests, which would not be shown in the  
9 accounts payable?

10 A. Well, to the extent that there was a  
11 universe of documents that had some probability of  
12 containing them, are you asking -- there were  
13 millions of documents in hundreds of thousands of  
14 boxes in the warehouse. Some of them contain  
15 minutes from the meetings of the Board of Directors  
16 in the 1920s. We did not go back and look in those  
17 documents.

18 So the answer to your question is,  
19 yes, to the extent documents existed to our  
20 knowledge that would contain that. We can't look  
21 for them if there isn't a universal document that  
22 would contain them if those documents are still  
23 with Conrail or been destroyed by Conrail.

24 Q. Let me direct your attention please  
25 to the following paragraph, also at the top of page



1 10, which indicates that other tests may have been  
2 performed in connection with this litigation.

3           Were there other tests performed in  
4 connection with this litigation by Penn Central or  
5 any of the contractors or employees?

6           A.     That's not what the sentence says.  
7 Are you asking me another question or what?

8           Q.     I'm asking basically for a  
9 clarification of this. If what you mean is that  
10 other tests were performed by the parties?

11          A.     You're mischaracterizing it. What it  
12 says, the only other tests would have been  
13 performed in the context of this litigation. We're  
14 clearly referring to tests that, or studies -- site  
15 investigations performed either by the government  
16 or by Conrail. We have not undertaken to study the  
17 site, to characterize it, et cetera.

18          Q.     Okay. That's what I was getting at  
19 and I wish -- I'm not attempting to characterize  
20 this, this speaks for itself. What I'm attempting  
21 to do is clarify; when you did answer in that case,  
22 when you are referring to other things, what you  
23 are saying is work product perhaps, or whether you  
24 meant that Conrail or the United States had  
25 performed tests that you had possession of.

1                   Let me refer you then to the next  
2 interrogatory, please.

3                   A.     I reviewed it.

4                   Q.     Thank you. Was there a permit for  
5 the operation of the oil/water separator prior to  
6 1976?

7                   A.     I wouldn't know.

8                   Q.     What steps did you take to determine  
9 whether such a permit existed?

10                  A.     Again, the same steps as I've  
11 outlined before.

12                  Q.     In this warehouse is there a set of  
13 documents or a subset of documents which might be  
14 called legal papers or from the law department?

15                  A.     I don't know. I don't know.

16                  MR. CUNNINGHAM: I refer you once  
17 again to the letter we wrote you in May 28th, 1994,  
18 categorizing all the documents there. If you want  
19 to make that part of the record.

20                  MR. JAFFE: May I see a copy of  
21 that?

22                  MR. CUNNINGHAM: Sure. I would like  
23 it marked, if you will, so the record is clear that  
24 we gave you that.

25                  MR. JAFFE: I'm sure if there's any

1 filings with the court this will be an attachment  
2 one way or the other.

3 MR. CUNNINGHAM: Yes. I would like  
4 it marked.

5 (Cioffi Exhibit No. 4 was marked for  
6 identification.).

7 (Off the record.)

8 BY MR. JAFFE:

9 Q. During the recess we have marked  
10 Deposition Exhibit Cioffi 4, which is a letter to  
11 me from Bob Kaiser of Frost & Jacobs.

12 Is it your testimony that this letter  
13 describes the universal documents contained in the  
14 Philadelphia warehouse?

15 A. Well, it describes the documents,  
16 yes, and attempts to categorize them to facilitate  
17 your future review of them should you decide to do  
18 so.

19 Q. How are these categories determined,  
20 like -- the question is not how one category -- how  
21 are the documents reviewed in order to determine  
22 the categories of documents that existed?

23 A. I don't know the answer to that. I  
24 don't know if those categories came to us from  
25 Conrail, I don't know if they said, here, we're

1 going to give you these kinds of documents, or if  
2 we took a quick look at them. Mr. Kaiser can tell  
3 you that.

4 Q. We sort of discussed this, I would  
5 like to answer the question directly.

6 What steps have you taken in  
7 preparation for this deposition as Penn Central's  
8 representative to determine what documents exist in  
9 the Philadelphia warehouse?

10 A. I think I answered that question.  
11 First of all, I reviewed my own knowledge of  
12 operational railroad records, which is that in  
13 April of 1976 congress ordered that they be  
14 conveyed --

15 Q. Excuse me for interrupting. I'm not  
16 asking for the substance, I'm just curious about  
17 what steps were taken specifically for this  
18 deposition, not the litigation.

19 MR. CUNNINGHAM: He understands the  
20 question. He's answered it a couple times before.  
21 For your sake, he'll do it again.

22 A. That's the starting premise, based on  
23 my own institutional knowledge of the status of our  
24 records, operational records in terms of railroads,  
25 they generally are not in our Philadelphia

1 warehouse.

2 As I mentioned earlier, records were  
3 going to be destroyed by Conrail, they notified us  
4 as they were required to do, and this 15 trailers,  
5 13,000 boxes were then put in another warehouse in  
6 Philadelphia, and that's where they remain and  
7 they're being reviewed at the current time.

8 Q. Okay. I have heard that several  
9 times today. What I asked was: What steps did you  
10 take in preparation for this deposition in order to  
11 determine what was contained in those documents?

12 A. That had already been done prior to  
13 this deposition. So I reviewed the work that Mr.  
14 Kaiser had done in categorizing the documents,  
15 again reviewed files here at Penn Central to the  
16 extent that they exist, and I already described  
17 what's in those files. Conferred with counsel,  
18 reviewed the pertinent documents and pleadings, and  
19 refreshed my memory as to the category of documents  
20 that were reconveyed to us from Conrail.

21 Q. And you testified you do not know how  
22 these categories of documents were determined?

23 A. I didn't create the categories.

24 Q. But you are here as a deponent as  
25 Penn Central's representative, therefore you are

1 here to testify as to Penn Central's institutional  
2 knowledge.

3 Penn Central must have had some  
4 knowledge of this in order to write this letter,  
5 and I'm asking where the basis of this letter came  
6 from.

7 MR. CUNNINGHAM: I think to shorten  
8 this process, this witness did not write that  
9 letter; Mr. Kaiser did.

10 A. Penn Central didn't write the letter,  
11 it was written by our outside counsel. And you'll  
12 have to ask him how he categorized it. He's not an  
13 employee of mine. He's outside counsel trying to  
14 respond to your discovery requests and I think he's  
15 done so adequately under Civil Rule 34. And I  
16 don't know what more I can add to that. I don't  
17 know and Penn Central doesn't have any  
18 institutional knowledge, because Penn Central  
19 didn't write that letter. I don't know what review  
20 Mr. Kaiser has conducted.

21 Q. Is it your testimony that Ray Jones  
22 has no knowledge of the contents of the warehouse?

23 A. I don't know the status of Ray Jones'  
24 knowledge.

25 Q. Did you see --

1           A.     I can't answer that question.

2           Q.     Did you discuss or talk to or  
3 interview Ray Jones in preparation for this  
4 deposition?

5           A.     No.   And Ray Jones would have no  
6 knowledge to the -- to my understanding, about  
7 these documents that have been reconveyed from  
8 Conrail, and no knowledge about the substance of  
9 the records.   Ray Jones is an employee who is a  
10 custodian of a warehouse.   It's not his job to know  
11 the substance of any records or to review the  
12 substance of any records.   And it would never occur  
13 to me to ask him about the substance of any records  
14 in the warehouse.   It's not his function.

15          Q.     Referring again to interrogatory  
16 number 11, in determining whether Penn Central had  
17 any permit for any of those various activities  
18 which are identified in the interrogatory, did  
19 anyone speak with Ray Jones in order to determine  
20 whether he was aware of a category of documents  
21 which may exist in the warehouse that may contain  
22 permits or oral or written approvals?

23          A.     No, because I would not expect Ray  
24 Jones to know that.

25          Q.     I'm just curious as to how the

1 custodian of records would not be relevant to such  
2 a question of determining what records there were.

3 A. Because the custodian of records as  
4 I'm using the term makes sure that the building is  
5 maintained, makes sure shelves don't collapse under  
6 the weight of documents, makes sure rain doesn't  
7 come in through broken windows or through roofs,  
8 makes sure the place isn't overridden with  
9 rodents.

10 That's what this custodian does; he  
11 doesn't deal with the substance of the records.

12 Q. Is there a record keeper or somebody  
13 who would have information as to what is contained  
14 within these records?

15 A. We've tried to do that for you in the  
16 letter that's been marked as Exhibit 4 as it is  
17 relevant to this lawsuit. There are other  
18 categories and indexes of documents. For example,  
19 I gave you an example, the Board of Directors  
20 meetings from the 1920s. There's a system whereby  
21 if you want to look in that box, with some luck we  
22 could locate it for you, and you could look in that  
23 box. And if you want to look at that index, it  
24 will be made available to you.

25 But from my review of it, there is



1 nothing in there that will contain information  
2 responsive to interrogatory number 11 over the  
3 other issues in this lawsuit, to the extent they  
4 deal with the operations and the railroads prior to  
5 1976. You're welcome to look for yourself.

6 Q. Is there a reason why that index has  
7 not been produced?

8 A. I don't think you asked for an index  
9 of documents.

10 Q. Why did you -- I mean, we did ask for  
11 one. In response to that you've given us this  
12 letter, and I'm curious to know why this letter was  
13 produced instead of that index.

14 A. I refer to an index of our general  
15 corporate records in the warehouse. I don't think  
16 you've asked for those. We attempted to categorize  
17 the records reconveyed by Conrail. My  
18 understanding is it's in a discovery dispute with  
19 the government. And we tried to categorize it to  
20 discharge our responsibilities under Civil Rule 34  
21 and to invite your inspection of those records.  
22 That's why we did it.

23 Q. In determining these categories that  
24 are in the letter, Exhibit No. 4, did you speak  
25 with either of the two employees who are doing the

1 documents review?

2 A. Not directly. Outside counsel had  
3 access to them and my staff had access to them.  
4 Information was gathered. So I did not speak  
5 directly to them, no.

6 Q. In preparation for this deposition  
7 did you speak with counsel as to what their fact  
8 gathering had been in -- for these responses?

9 A. Yes.

10 Q. Why do you not know what steps were  
11 taken in order to categorize the documents that  
12 you've stated, I believe, although you haven't  
13 actually stated it categorically, that this letter  
14 is a supplementation to?

15 A. Is your question why is it that I  
16 don't know what I don't know?

17 Q. My question is --

18 A. I don't know. Obviously we didn't  
19 discuss it in our preparation, or if we did, I  
20 don't remember it. But I don't know. That's my  
21 answer. And the answer is very easily ascertained,  
22 you could pick up the phone and talk to Mr. Kaiser  
23 and ask how he devised it. I relied on it to be  
24 accurate. I rely on counsel in this case and other  
25 cases. I have no reason to believe that those

1 categories are -- I don't know specifically how he  
2 arrived at them.

3 MR. CUNNINGHAM: If it helps  
4 anything, we'll be glad to have him call you on the  
5 telephone.

6 Q. Was Penn Central required to have any  
7 permit for the transportation of hazardous  
8 substances through the rail yard?

9 A. Do you have a time frame?

10 Q. Penn Central, every question I ask is  
11 Penn Central's operation.

12 MR. CUNNINGHAM: They're all  
13 different. Pose the question, please give us a  
14 time so the witness can answer. It will save a lot  
15 of time.

16 MR. JAFFE: Ever, ever.

17 MR. CUNNINGHAM: Are you talking  
18 1976 or after?

19 MR. JAFFE: Ever.

20 A. We weren't in the rail business after  
21 April, 1976, so the answer is after that point in  
22 time, no. As to prior to that, to that point in  
23 time, I don't know.

24 Q. What steps did you take to determine  
25 whether such permits were required?

1 A. Could you say that again?

2 (The record was read back by the court reporter.)

3 A. No one ever asked us what permits  
4 were required, until you just asked the question a  
5 minute ago. You asked us what permits were  
6 obtained by Penn Central, you didn't ask what  
7 permits were required in the interrogatory.

8 Q. You're correct. I apologize for my  
9 misstatement.

10 What steps did you take to determine  
11 whether Penn Central had any permit of the type  
12 described in the interrogatory?

13 A. The same steps I've already  
14 articulated in responding to your other questions.  
15 I went back to look at the documentary records to  
16 the extent it exists, and realizing, of course,  
17 that the operational records, most of them were no  
18 longer in our possession.

19 Q. Your previous testimony was that you  
20 had reviewed accounts payable and waybills.

21 Did you review corporate records to  
22 determine whether any permits were obtained by Penn  
23 Central?

24 A. I don't know what you mean by  
25 corporate records.

1 Q. I'm referring to your Exhibit No. 4,  
2 paragraph 5, page 4, corporate records, I'm using  
3 your categories. And if you don't know what you're  
4 referring to by corporate categories, then there's  
5 a problem with your categorization.

6 MR. CUNNINGHAM: Objection. Once  
7 again I call your attention, the witness did not  
8 write that letter and you're trying to make that  
9 his letter. It's not his letter, it's his  
10 counsel's letter.

11 MR. JAFFE: I understand.

12 MR. CUNNINGHAM: Don't ask him  
13 questions about verbiage that he didn't write,  
14 okay. That's all.

15 MR. JAFFE: Make it simple.

16 BY MR. JAFFE:

17 Q. Did you review any corporate records  
18 as those are defined in the Exhibit No. 4 in order  
19 to determine whether Penn Central had any permit as  
20 they're described in interrogatory number 11?

21 A. As I understand Exhibit 4, it tries  
22 to categorize the documents which were reconveyed  
23 to Conrail, some 13,000 boxes reconveyed from  
24 Conrail to us. We've already disclosed to you what  
25 documents we've reviewed, and to my knowledge we

1 haven't reviewed any other documents other than the  
2 ones we've told you we reviewed. And again, we  
3 invite your inspection of those documents.

4 Q. The answer to my question is no?

5 A. The answer is what it is in the  
6 record.

7 Q. I'm now asking you a specific  
8 question. If your attorney has an objection to the  
9 question under the Federal Rules, he may make it;  
10 otherwise I would appreciate it if you would answer  
11 the question.

12 MR. CUNNINGHAM: Mr. Jaffe, let me  
13 remind you of something. You're arguing with this  
14 witness. If it continues, we're going to have to  
15 take steps to correct that.

16 A. Repeat your question, please.

17 MR. CUNNINGHAM: Please quit arguing  
18 with the witness is all I'm saying. The form of  
19 the question is extremely argumentative. I've  
20 allowed this to go on, but I'm not going to allow  
21 it anymore, I'll tell you right now.

22 MR. JAFFE: The record will reflect  
23 whether it's argumentative or not.

24 BY MR. JAFFE:

25 Q. Did you, and by you I mean Penn

1 Central, review any corporate records as corporate  
2 records are defined on page 4 of Exhibit 4 to  
3 determine whether any permits were possessed or any  
4 permits were obtained by Penn Central such as they  
5 are described in interrogatory number 11?

6 MR. CUNNINGHAM: Objection. It's  
7 been asked and answered at least twice.

8 Q. Somebody asked me to repeat the  
9 question. I don't know if it was the witness or  
10 you.

11 A. I'll answer the question as best I  
12 can. I haven't seen what you're referring to as  
13 the definition of corporate records.

14 Q. Let me give you Exhibit No. 4,  
15 please.

16 A. There was one understanding that  
17 corporate record is any records in our possession,  
18 that is what is confusing about your question.

19 Q. I'm sorry. I thought since you had  
20 referred to the letter several times you were  
21 familiar with it.

22 A. I'm reading. This category of  
23 documents includes old corporate records such as  
24 tax records, ledgers, minute books, old stock and  
25 bond certificates no. Ledgers, minute books, no.

1 Old stocks and bond certificates, no.  
2 Authorization for expense forms, to my knowledge,  
3 no. Those would not be logical sources for  
4 information responsive to interrogatory 11.

5 Q. Let me give you back this exhibit  
6 again, and could you please tell me if you have  
7 reviewed real estate records as they're defined on  
8 the same page in order to respond to interrogatory  
9 number 11?

10 A. Not to my knowledge, no.

11 Q. Let me ask you to review the entire  
12 exhibit, and we've been talking about accounts  
13 payable records and waybills as the only documents  
14 that were reviewed. Let me just ask you to confirm  
15 you're using those terms as they're defined in that  
16 exhibit.

17 A. Yes.

18 Q. So there are no other categories that  
19 are in this letter that you've reviewed in response  
20 to these -- let me broaden the question to any of  
21 these interrogatories?

22 A. Outside of other sources that I  
23 already mentioned earlier in my testimony, that's  
24 true.

25 Q. Okay. Not referring specifically to



1 this interrogatory, do you know whether Penn  
2 Central during its operations at the rail yard, or  
3 New York Central for that matter, were required to  
4 have any permit which would fall under the  
5 categories?

6 A. I don't know.

7 Q. Okay. Let me return your attention  
8 to Exhibit No. 4 one more time. Let me ask you:  
9 There were documents which were filed by the law  
10 department of Penn Central; would they fit into one  
11 of those categories or would they be another  
12 different category?

13 A. It's very difficult for me to answer  
14 because of the hypothetical nature. Documents like  
15 that could be in corporate records, tax records,  
16 could have been generated from the law department,  
17 for example. I don't know. There could have  
18 been -- there could be documents from the legal  
19 department dealing with employee filings, dealing  
20 with some sort of employee discharge issue. It's  
21 impossible for me to say.

22 Q. Let me turn your attention to  
23 interrogatory number 1 and ask you to review it.

24 A. I have reviewed it.

25 Q. What steps were taken to identify

1 such persons as I requested in the interrogatory?

2 A. The same steps as we've already  
3 discussed.

4 Q. And as I understand it, you did not  
5 speak with Mr. Stockhoff in preparation for those  
6 interrogatory responses?

7 A. I am sure he was consulted or members  
8 of the real estate department were consulted about  
9 them. Again, it would be my expectation they would  
10 have very little information that would be  
11 responsive to these kinds of interrogatories.

12 Q. Just to be clear: When you say it's  
13 your expectation, do you know whether he was  
14 consulted or not?

15 A. I do not know for certain whether he  
16 was consulted. I would have expected him or  
17 someone from the real estate department to have  
18 input.

19 Q. Let me direct your attention to  
20 paragraph number 2 in your response there in the  
21 middle of page 11.

22 A. Yes, I see it.

23 Q. It says, "All employee records and  
24 information relating to Penn Central's operation of  
25 its rail system were transferred to Conrail," and

1 then in this letter; however, there is indication  
2 of employee files being located as part of the  
3 universal of filings in Philadelphia. And I would  
4 like it if you could clarify that answer, because  
5 it's confusing to me.

6 A. Where on Exhibit 4 is there a  
7 reference to it?

8 Q. Paragraph 1 shows three different  
9 types.

10 A. Well, again, this is referencing  
11 documents that have come back to us from Conrail.  
12 These are not documents that we have kept in  
13 possession.

14 Q. Do you have them in your possession  
15 now?

16 A. Yes, that's what we're explaining.

17 Q. I don't see what the relevance is,  
18 they went to Conrail and they came back. You have  
19 them now, and as I understand it, you haven't  
20 reviewed them; is that correct?

21 A. We've reviewed some of them, that's  
22 correct.

23 Q. Your testimony was you had not  
24 reviewed anything but waybills and --

25 A. You were referring to the documents

1 in general. When you said them, I assumed you  
2 meant these 13,000 boxes that came back from  
3 Conrail. My answer is, we reviewed some of them.

4 Q. Have you reviewed -- I'm sorry. Have  
5 you reviewed the employee records in response -- in  
6 preparing your responses to interrogatory number  
7 12?

8 A. I don't believe so, no.

9 MR. JAFFE: I think what we should  
10 do at this point is take a 5-minute break, and I  
11 can review my notes and see if I have anymore  
12 questions.

13 MR. CUNNINGHAM: All right.

14 (Off the record.)

15 BY MR. JAFFE:

16 Q. Earlier you had identified a category  
17 of documents that you identified as operational  
18 records, do you recall that, not in Philadelphia,  
19 but something here I think you said?

20 A. I don't recall using that term.  
21 There were documents here. I think I described  
22 what is in the file here pertaining to this  
23 lawsuit, yes. We usually refer to them as  
24 litigation files.

25 Q. All right. So when you said, I

1 believe that you said at one time operational  
2 records, you were referring to litigation?

3 A. Yeah. Those records that I described  
4 for you earlier.

5 Q. All right. Are you familiar with an  
6 organization called the American Association of  
7 Railroads or Association of the American Railroads?

8 A. Vaguely.

9 Q. Could you describe your vague  
10 familiarity with them?

11 A. Vagueness is difficult to describe.  
12 But generally I guess I'm aware that this  
13 organization exists. I have had no interaction  
14 with them and wouldn't have had any expectation to  
15 interact with them given the nature of our business  
16 at the time I joined, which was primarily  
17 manufacturing, and now primarily insurance.

18 Q. All right. Other than what has been  
19 the contacts that have been made through discovery  
20 in this litigation, are you aware of any other  
21 informal contacts made with the AAR to determine  
22 whether they had relevant documents to the  
23 litigation?

24 A. By Penn Central?

25 Q. Yes.

1           A.     I'm not aware of any, no.

2           Q.     All right. Let me turn your  
3 attention to the other subject matters that you are  
4 here to represent Penn Central for, and that's  
5 subject matter 19 of our Rule 30(b)(6) Deposition  
6 Notice.

7                     Are you aware of any steps -- Excuse  
8 me, let me rephrase that.

9                     Has Penn Central taken any steps to  
10 comply with the administrative orders identified in  
11 paragraph 19?

12           A.     You're referring me now to paragraph  
13 19 of Deposition Exhibit 2?

14           Q.     Yes.

15           A.     I believe we had explained to you at  
16 some length in correspondence from outside counsel  
17 why we believe in good faith we're not required to  
18 comply with that order. And if you would like me  
19 to, I could direct you to that correspondence. I  
20 think there's a letter dated August 6th, 1992  
21 directed to a William Muno, M U N O, which sets  
22 forth our position on that issue.

23           Q.     May I see that letter, is that  
24 possible? The letter that you identified to Mr.  
25 Muno identifies Penn Central apparently has two

1 reasons for noncompliance. One is its complaint to  
2 the special court, and the second is apparently its  
3 belief that evidence is lacking that they are  
4 liable; is that correct?

5 A. I believe that's correct, yes.

6 Q. Are there -- And do those reasons  
7 remain the reasons today?

8 A. Yes.

9 Q. And are those the only reasons?

10 A. It's all I can think of right now as  
11 you ask the question.

12 Q. So based on that, Penn Central -- Is  
13 it correct to say that Penn Central has taken no  
14 steps to comply with the administrative order?

15 A. Well, we've set forth to the  
16 government why we believe compliance is not  
17 necessary, so; therefore, it would follow from that  
18 that we haven't complied. But compliance is a  
19 charged word that has connotations to accuse  
20 someone of not complying when they don't have to  
21 comply, I think, it's incorrect.

22 We are not required to comply. And  
23 we've established, at least we think, the good  
24 faith reasons why we're not required to comply.

25 Q. I'm just trying to get to you -- you

1 set forth the reasons why you do not believe you  
2 have to comply?

3 A. Correct.

4 Q. And I just want to confirm that based  
5 on those reasons you, in fact, have not complied?

6 A. Well, again, I've answered that  
7 question. It would be logically inconsistent for  
8 us to tell you we are not required to comply and  
9 then go ahead and spend the money and time to  
10 comply.

11 We have not moved forward to comply  
12 because we don't believe it's legally required of  
13 us.

14 Q. I'm not being argumentative here.  
15 And I think that it would be --

16 A. It's not --

17 Q. Let me finish. It really is the most  
18 efficient thing to just answer the question.

19 And the reason I say that is Conrail  
20 has argued that they do not have to comply, that  
21 they have a good faith reason for not complying,  
22 but they have gone ahead and complied.

23 If I asked the same question of them,  
24 they would say, we don't have a reason but we are  
25 complying, for whatever reason.



1 I just want to establish that, if it  
2 is true, whether Penn Central has or has not  
3 complied, in fact, could you please tell me based  
4 on those reasons, has Penn Central taken any steps  
5 other than writing this letter to comply?

6 A. I believe we've written other letters  
7 and had discussions including ways in which we  
8 would participate in a remediation with government  
9 officials and also with Conrail.

10 So other things have been done to  
11 discuss the issue. But other than those things,  
12 the additional letters, some negotiations over the  
13 terms of our participation in a remediation of the  
14 site, I don't believe we've taken any other steps.

15 Q. As to those two reasons that are set  
16 forth in the letter?

17 A. Yes.

18 Q. Do you believe that each of them on  
19 their own would be a sufficient basis for  
20 noncompliance, or is it only the fact that they  
21 both exist in tandem that you have a sufficient  
22 basis for noncompliance?

23 A. I believe they both provide  
24 independent bases for us not complying, and I think  
25 the argument is stronger when they are combined.

1 MR. JAFFE: I think I have no  
2 further questions at this time.

3 MR. JUNK: I've got a few.

4 MS. LANDEVER: Go ahead.

5 CROSS-EXAMINATION

6 BY MR. JUNK:

7 Q. Mr. Cioffi, I'm Tim Junk, I'm Deputy  
8 Attorney General for the State of Indiana. Earlier  
9 in your testimony you referenced 110 insurance  
10 carriers?

11 A. That's correct.

12 Q. Are any of those insurance carriers  
13 companies of general liability policies?

14 A. That's correct. Different layers,  
15 and, yes.

16 Q. For purposes of this lawsuit, has  
17 Penn Central looked for insurance coverage by any  
18 of these insurers?

19 A. The answer is, yes, to the extent we,  
20 if and when it's determined that we have any  
21 liability for this site, we would expect to proceed  
22 against our insurance carriers. And as you know,  
23 this whole area of insurance coverage for  
24 environmental liabilities is an issue of some  
25 considerable litigation, and now it's being

1 considered as part of the reauthorization of the  
2 Super Fund legislation.

3 So I would expect if we, if it's  
4 determined that we have liability, that we would  
5 try and proceed against an insurance carrier or  
6 carriers, realizing that they have defense that  
7 they would assert.

8 Q. Have you asserted -- Do any of those  
9 carriers have a clause that they have a duty to  
10 defend you?

11 A. No. Generally our policies did not  
12 include duties to defend.

13 Q. Would any of these carriers have  
14 documents independent of documents you've given  
15 them regarding this lawsuit, documents like  
16 complaints and things like that that you wouldn't  
17 provide them with?

18 A. I would be surprised if they did. I  
19 don't know what they had. It would surprise me if  
20 they did.

21 Q. I was wondering before 1976 if Penn  
22 Central would have some duty to notify insurers of  
23 claims made against the company, whether or not  
24 they're willing to be --

25 A. There's a duty to notify of claims

1 asserted. Other than having, as you know, a  
2 complaint in their file, I don't know what else  
3 they would have. Certainly I don't think they  
4 would have anything that we haven't supplied to  
5 them, but I don't know.

6 Q. When you look at companies, if  
7 liability is established in this suit, when you  
8 look at companies that may be liable for coverage,  
9 which companies are those; can you give me those?

10 A. I don't know.

11 Q. Can you identify them at a later  
12 date -- What I'm wondering, if we want to direct  
13 discovery to these companies to see if they have  
14 any records from 1976 or before, which companies  
15 should we ask?

16 A. Well, I could tell you pretty  
17 categorically they wouldn't have any documents  
18 prior to 1976. The documents they would have would  
19 be the complaints sent to them at or about the time  
20 the complaint was filed.

21 Also you need to know that the  
22 companies that were in our insurance program in  
23 1976 are not necessarily the same companies in the  
24 program today, and weren't necessarily the same  
25 companies in the program in 1968. That changed

1 year to year.

2 Our risk managers go out and secure  
3 insurance and renegotiate, et cetera; new carriers  
4 are brought in at different layers, et cetera.

5 Q. I'm going to switch topics here.  
6 Earlier you referenced 15,000 claims that you  
7 directly or indirectly supervised; do you recall  
8 that?

9 A. I do recall that.

10 Q. You mentioned that some portions of  
11 these are related to railroad operations, as I  
12 recall?

13 A. I think what I said, was that the  
14 asbestos claims and the hearing loss claims relate  
15 to the old railroad operation, and then I said that  
16 the majority of the remaining claims do not relate  
17 to the railroad operations.

18 Q. Well, I'm only interested in the  
19 types of claims that might relate to railroad  
20 operations, other than asbestos and hearing loss.

21 Do you have any claims related to  
22 workplace exposure to hazardous substances?

23 A. Not to my knowledge, no, other than  
24 asbestos and hearing loss.

25 Q. One final line of questioning. I

1 understand you're an instructor at the law school  
2 here?

3 A. That's correct.

4 Q. And you teach trial techniques?

5 A. Well, I teach three courses on a  
6 rotating basis. Evidence, a course called pretrial  
7 litigation, and a course called trial practice.

8 Q. I understand from talking to Mr.  
9 Cunningham on the break that you've authored some  
10 book or books in this area?

11 A. Yes.

12 Q. What would be the title of the book  
13 and the publisher?

14 A. There's a book called Ohio Pretrial  
15 Litigation published by a company called Anderson  
16 Publishing company, and a book I coauthored called  
17 Sixth Circuit Practice Manual, published by the  
18 same company.

19 MR. JUNK: No further questions,  
20 thank you.

21 MS. LANDEVER: I would like to take  
22 a break before we start.

23 (Brief recess.)

24 CROSS-EXAMINATION

25 BY MS. LANDEVER:

1 Q. Mr. Cioffi, my name is Carolyn  
2 Landever and I'm counsel to Conrail.

3 A. Okay.

4 Q. We now know that you are a trial  
5 attorney and something of an evidence expert, so I  
6 take it that you understand the normal procedures  
7 in the deposition?

8 A. I do.

9 Q. Okay. I will attempt to ask  
10 questions as clearly as possible; if you don't  
11 understand a question, please ask me to rephrase  
12 it. I will be addressing all questions to you. If  
13 I want to address a question to counsel, I will ask  
14 Mr. Cunningham a question.

15 A. I understand.

16 Q. Okay. I understand that you are here  
17 in response to the United States Deposition  
18 Notice --

19 A. Yes.

20 Q. -- 30(b)(6), and one personally for  
21 you?

22 A. Correct.

23 Q. Are you here as well in response to  
24 the Notice of 30(b)(6) Deposition from Conrail?

25 A. Yes.

1 Q. Okay. What topics from the Conrail  
2 30(b)(6) Deposition Notice are you here to address?

3 A. Well, within the confines of -- I've  
4 explained most of the case in terms of our  
5 limitation on records and personnel. I'm probably  
6 the person with the most historical knowledge of  
7 these matters, all of the matters addressed in your  
8 30(b)(6) notice.

9 Q. So are you here to speak on response  
10 of Penn Central to all of those matters?

11 A. I will, yes.

12 Q. Okay. Was your preparation for the  
13 deposition for Conrail the same as your preparation  
14 for the United States deposition?

15 A. Yes, essentially.  
16 (Cioffi Exhibit Nos. 5 through 8 were marked for  
17 identification.)

18 Q. All right. I have marked exhibits, I  
19 would like you to take a look at Exhibit No. 5,  
20 which is defendant Conrail's second set of  
21 interrogatories and request for documents to Penn  
22 Central.

23 A. I've reviewed it.

24 Q. And Exhibit 6, which is Conrail's  
25 third set of interrogatories and requests to Penn



1 Central.

2 A. I've reviewed this, yes.

3 Q. Are these the interrogatories that  
4 Penn Central responded to?

5 A. I believe they are. I haven't  
6 studied them thoroughly, but I'll accept your  
7 representation to that effect.

8 Q. Now, we have also marked additional  
9 exhibits, Exhibit No. 7 is Penn Central's response  
10 to Conrail's second set of interrogatories and  
11 requests for documents, and Exhibit No. 8 is Penn  
12 Central's response to Conrail's third set of  
13 interrogatories.

14 A. Okay.

15 Q. Are these the Penn Central responses  
16 to the Conrail second and third sets of  
17 interrogatories?

18 A. I haven't reviewed them in detail,  
19 but I'll accept your representation that these are  
20 complete copies, yes.

21 Q. Could you look at the third set of  
22 interrogatories?

23 A. Exhibit 6; is that right?

24 Q. Yes.

25 A. Okay.

1 Q. And if you would look at -- I'm  
2 sorry. Penn Central's response to the third set of  
3 interrogatories, which I believe is Exhibit 8.

4 A. Okay. I have it in front of me.

5 Q. Will you look at what would be, if it  
6 were numbered, page 6?

7 A. Yes.

8 Q. Is that your signature at the bottom  
9 of the page?

10 A. It looks like it. It looks like I  
11 was in a hurry, actually.

12 MR. CUNNINGHAM: Or you're a  
13 doctor.

14 A. That's my signature.

15 Q. Okay. If you would look just for  
16 clarification, in the fourth sentence of this  
17 verification.

18 A. Yes.

19 Q. You speak of response to Plaintiff  
20 United States first set of interrogatories and  
21 request for production. I take it that was just an  
22 error?

23 A. I assume so.

24 Q. So this is a verification of  
25 Conrail's --

1 A. Correct.

2 Q. -- interrogatories?

3 A. Again, there is another typo on this  
4 as well -- Go ahead.

5 Q. So did you verify under oath Penn  
6 Central's response to this third set of  
7 interrogatories?

8 A. Yes, I did answer that. I was  
9 intending to do so. Either a typo or computer  
10 error in which the person rerunning it didn't take  
11 out the appropriate name.

12 Q. Are you familiar with your  
13 obligations under the Federal Rules to answer these  
14 interrogatories fully?

15 A. I am.

16 Q. Are you familiar under the Federal  
17 Rules of your obligation to answer these  
18 interrogatories completely?

19 A. Yes, I am.

20 Q. Are you familiar with your obligation  
21 to answer these interrogatories in a responsive  
22 manner?

23 A. Yes.

24 Q. And in a nonevasive way?

25 A. Yes.

1 Q. Did you answer these interrogatories  
2 separately?

3 A. I don't know what you mean by that.

4 Q. The federal rule requires that you  
5 answer interrogatories separately, fully under  
6 oath?

7 A. I believe the documents speak for  
8 itself in that they are answered separately, yes.

9 Q. Did you answer these interrogatories  
10 fully?

11 A. I believe so, yes.

12 Q. Can you describe to me how Penn  
13 Central prepared the responses to Conrail's  
14 interrogatories?

15 A. Well, I believe I outlined the  
16 approach earlier to answering interrogatories in  
17 general. We received many sets of interrogatories  
18 in the course of litigation. I will instruct  
19 members of my staff, perhaps initially, to begin  
20 gathering documents or facts really that are  
21 responsive, since interrogatories ask for facts.

22 My paralegal and perhaps others in  
23 the corporation; for example, someone in the real  
24 estate department if relevant, will then confer  
25 together, sometimes with me and then always with

1 outside counsel.

2           Outside counsel will also conduct a  
3 fact investigation and informal investigation going  
4 on vis-a-vis the interrogatories in question with  
5 his or her additional fact investigation, so that  
6 the answers can be as complete as possible.

7           The goal of this process is to convey  
8 all the information known to a company that is  
9 responsive.

10           Q.    As the party, or as the individual  
11 verifying your company's responses, do you oversee  
12 the gathering of this information?

13           A.    Yes.

14           Q.    What steps do you internally take to  
15 ensure that Penn Central's interrogatories answers  
16 are true; what steps did you take?

17           A.    I think I outlined those steps. I  
18 will confer with persons inside the corporation. I  
19 may ask them questions, talk to certain individuals  
20 about if they have looked at -- at the documents in  
21 the record center. I will ask them if they have  
22 discussed the matter with outside counsel. I'll  
23 talk to outside counsel when I review a first draft  
24 about the interrogatories.

25           These interrogatories, it's my

1 experience, may undergo two, sometimes three drafts  
2 as more information is gathered.

3 Q. What steps do you personally take to  
4 ensure that Penn Central's interrogatories  
5 responses are complete?

6 A. All the steps I've just outlined and  
7 that I discussed in my answers to Mr. Jaffe's  
8 questions.

9 Q. Just for the sake of clarity at this  
10 point here; are there any in particular?

11 A. Well, facts in this lawsuit or any  
12 other lawsuit comes from two things; documents,  
13 things, and people. So we make an effort to locate  
14 and identify people who have facts to contribute in  
15 answering to interrogatories and things that might  
16 contribute understanding of the documents.

17 So we look in these two sources, and  
18 try to exhaust those two sources to answer the  
19 interrogatories. We can't get information from any  
20 other source that I'm aware of.

21 Q. So that is a complete investigation  
22 and therefore your responses are complete?

23 A. That's how we go about doing it, and  
24 I've already answered they are complete, yes.

25 Q. What steps did you take to ensure

1 that Penn Central's interrogatories responses were  
2 not evasive?

3 A. I've read them. If they answered the  
4 question fairly and conveyed the information in our  
5 possession, then they were not evasive. And as I  
6 mentioned in my earlier testimony, it's not our  
7 goal to be evasive in litigation. I find that it  
8 really eventually just simply adds to the cost of  
9 the litigation.

10 My style, I prefer to get all the  
11 facts out on the table, 97 percent of all  
12 litigation and settlement prior to trial, the  
13 sooner the other side understands the facts, the  
14 sooner we understand the facts, the sooner we can  
15 have meaningful settlement negotiations and resolve  
16 the case.

17 From a corporation's point of view,  
18 all litigation is a problem. It's a problem that  
19 needs to be resolved. And as I said, in 97 percent  
20 of all cases, statistically it gets resolved in  
21 settlement negotiations. That's our goal. Get the  
22 information out, make sure the other side is  
23 assessing the information correctly, and if at all  
24 possible, try to resolve it on reasonable grounds.

25 Q. So your response that you assured

1 that Penn Central's response were not evasive is  
2 because you ensured that all of the facts were out  
3 on the table?

4 A. My response is what I just said.  
5 That's part of my response.

6 Q. Okay.

7 A. It probably would go quickly if you  
8 don't recharacterize my testimony. Just let my  
9 answer stand.

10 Q. If you disagree with what I've said  
11 and --

12 A. I think you only stated part of it.

13 Q. But that part is true?

14 A. Accurate.

15 Q. What steps did you take to make sure  
16 Penn Central's interrogatories answers were  
17 responsive, you mentioned, and fairly?

18 A. My definition of responsive, and I  
19 think this is reflected at least in Black's Law  
20 dictionary, is that if the question is attempted to  
21 be met fairly by the response, then it's  
22 responsive.

23 So I look at the answers and make a  
24 determination if the answer is trying to fairly  
25 respond to deal with the issue raised in the



1 question, then it's responsive.

2 Q. By fairly, do you mean in a  
3 judgmental sense, or you mean what?

4 A. I don't know. I don't know what you  
5 mean by judgmental sense.

6 Q. You can say something is fair or  
7 unfair; you're not using it in that sense, right?

8 A. I'm using fair in the sense of a good  
9 faith effort to respond to the question. Yes.  
10 (Cioffi Exhibit No. 9 was marked for  
11 identification.)

12 Q. I would also like to give you Exhibit  
13 9, which is the third-party plaintiff Conrail's  
14 first request for production of documents to  
15 third-party defendant Penn Central. And you'll  
16 notice that the first, the second, and third  
17 request for production of documents was  
18 incorporated in the interrogatories that you have  
19 already received.

20 Q. What role did you personally have in  
21 responding to these document requests?

22 A. Well, the same role as I've already  
23 outlined.

24 Q. Could you recap, please?

25 A. What part of my previous answer don't

1 you understand?

2 Q. Your previous answer was in reference  
3 to the United States document requests.

4 A. I've answered that question  
5 specifically with respect to your questions about  
6 Conrail's third set of interrogatories. I took the  
7 same steps.

8 Q. So you took the same steps as you did  
9 for the interrogatories?

10 A. Essentially, yes. That is inquiring  
11 of people who might have information and, again,  
12 who could direct us to documents specifically, and  
13 then specifically ascertaining what documents are  
14 in our possession that might be in response to  
15 these.

16 Q. Who helped --

17 A. And then again, to go on; outside  
18 counsel obviously is involved in reviewing the  
19 documents, the universe of documents in deciding  
20 which documents are responsive, or at least  
21 recommending to me what documents are responsive  
22 and what aren't responsive and what are protected  
23 by privilege. And I confer with counsel and then  
24 make a determination.

25 Q. Who actually prepared the responses?

1           A.     Well, they're prepared by the  
2 corporation, the corporation's responses. Now,  
3 like any other corporate document, there may be  
4 varying degrees of participation by outside  
5 counsel. Outside counsel, litigation counsel  
6 obviously play a part in responding to the requests  
7 and interrogatories.

8                     I can't tell you specifically if they  
9 did 80 percent of the work or 40 percent of the  
10 work in these. But they are intimately, as you  
11 know, in litigation involved in responding to  
12 these.

13           Q.     What did you do to ensure the  
14 validity of responses and gender by outside  
15 counsel?

16           A.     I don't know what you mean by that  
17 question; the validity of the responses.

18           Q.     Do you oversee outside counsel?

19           A.     Yes.

20           Q.     So ultimately these responses are  
21 yours and you --

22           A.     They're served upon the corporation,  
23 the corporation responds to it, and we get  
24 assistance from outside counsel in doing that. And  
25 I oversee the delivery of that assistance or legal

1 service, yes.

2 Q. Did you personally do any searches  
3 for relevant records?

4 A. Personally; this is in regard to  
5 Exhibit 9?

6 Q. As well as the first two, which I  
7 believe are -- or the second two, which are Exhibit  
8 7 and 8.

9 A. I may have, I don't specifically  
10 recall. It would, however, be unusual for me to go  
11 to the files in Philadelphia, for example, or  
12 anyplace else to try to pull out these documents.

13 Q. If not you, then who did make the  
14 searches for relevant records?

15 A. Well, a combination. My paralegal  
16 will make the search, perhaps, at my direction, or  
17 the universe of documents to the extent they might  
18 exist. Now, we've already gone through at some  
19 length, while virtually none of these documents  
20 exist in our possession, but to the extent the  
21 documents exist, the universe then is made  
22 available to outside counsel who will review them  
23 and make recommendations to me as I've already said  
24 as to what's responsive, what's not responsive,  
25 what's privileged and what's not privileged.

1 Q. Would you look at Penn Central's  
2 response to Conrail's third set of interrogatories  
3 and request for documents?

4 A. What's the exhibit number you want me  
5 to look at?

6 Q. It is Exhibit 8, I believe.

7 A. Yes, I have it in front of me.

8 Q. You at least dated your verification  
9 May 4th?

10 A. Yes.

11 Q. Did you receive an updated report on  
12 available documents as you had described to Mr.  
13 Jaffe previously, at that date?

14 A. I don't know if it was at that date,  
15 but I would say that if I did not directly, counsel  
16 had access to that review process and was updated,  
17 yes.

18 Q. So there is no evidence that is not  
19 included in your responses as of May 4th?

20 A. No evidence?

21 Q. No evidence that you have not  
22 mentioned that would not be --

23 A. To my knowledge, let me answer your  
24 question --

25 Q. Let me rephrase that. Is all of the

1 evidence you know of included in your responses?

2 A. All evidence that we were aware of  
3 that was responsive and not privileged was  
4 provided, yes.

5 Q. What did you do to ensure that you  
6 were using the entire universe of documents  
7 relevant to these specific document requests?

8 A. Well, we considered where these  
9 documents might be, and I think I have already gave  
10 the example, if you looked in our warehouse there  
11 are literally hundreds of thousands of documents  
12 that might deal -- accounting records from the turn  
13 of the century or corporate resolutions, et  
14 cetera.

15 Obviously, none of those were  
16 consulted and none of those boxes were looked at.  
17 And given the fairly unique facts that all the  
18 operational records of the railroads were conveyed  
19 to your clients in 1976, it made the universe of  
20 documents in response to, or contained in Exhibit 8  
21 fairly small, predominantly consisting of those  
22 documents that were reconveyed to us by Conrail  
23 when Conrail no longer wanted them.

24 Q. So your response does include those  
25 documents in the Philadelphia warehouse?

1           A.     Yes. To the extent that we excluded  
2 them from our search because it certainly didn't  
3 appear to us that any of those would be  
4 responsive. So there are literally hundreds of  
5 thousands of documents in responding to these. We  
6 don't look at all those documents. We exclude  
7 broad categories that are unlikely to contain any  
8 information that's responsive.

9           Q.     Did the searches that you asked your  
10 two individuals to make in Philadelphia include  
11 searches for documents requested by Conrail's  
12 document request?

13           A.     I don't believe. Now, I may be  
14 wrong, maybe I might state this: I don't believe  
15 they were given the documents request and said, try  
16 to find these. As I said, the instructions are  
17 much broader. There are other cases involved  
18 besides this one, and they're given very broad  
19 requests such as, any document that mentions  
20 Elkhart Yard.

21           Our belief being that that will  
22 uncover all the universe of documents and then we  
23 can be more specific if indeed any of those  
24 documents exist. And I think I've already  
25 testified that the documents reconveyed to us, as I

1 put it, from Conrail, they appear to be very, very  
2 unlikely, and more than a couple thousands of boxes  
3 have verified this: They appear to be very, very  
4 unlikely to contain any evidence responsive.

5 Q. The second set of interrogatories and  
6 responses from Conrail was dated August 20th,  
7 1993.

8 A. Yes.

9 Q. Which I understand would have  
10 predated the beginning of your searches at the  
11 warehouse?

12 A. I don't know for sure. It would have  
13 begun in that time frame. My recollection is kind  
14 of at the end of last summer. But I don't know for  
15 sure.

16 Q. So nonetheless, you did not direct  
17 any searches based on document requests from  
18 Conrail?

19 A. Well, I did to the extent I've  
20 already explained it. If documents mention Elkhart  
21 or refer to them, yes. I did not instruct anyone  
22 to give the people looking through these documents  
23 a document request and ask them to go look for  
24 those particular documents.

25 I did; however, see to it that there



1 was a method in place by which response of  
2 documents would be discovered. But it did not  
3 appear to me to be very effective to give them a  
4 set of document requests that they might not  
5 understand, and it would considerably slow down the  
6 process.

7 Q. Did that include documents that might  
8 have been applicable to Conrail's interrogatories?

9 A. I didn't understand your question.  
10 Repeat it.

11 Q. You said that you didn't direct any  
12 searches as might have been informative to  
13 Conrail's documents request.

14 My question is: Did you direct any  
15 searches that might have helped you respond to  
16 Conrail's interrogatories that were --

17 A. Again, you've mischaracterized my  
18 testimony. There have been instructions to pull  
19 out the universe of documents that refer to the  
20 Elkhart Yard. I believe that that method will  
21 uncover all documents that are reviewed that happen  
22 to be responsive to your interrogatories or your  
23 document requests. That's how it was done.

24 Q. So to the extent that your responses,  
25 either to the documents request or to Conrail's

1 interrogatories include no documents or reveal no  
2 documents, it's because you do not have any  
3 documents?

4 A. That's correct.

5 Q. Now, I would like you to look at Penn  
6 Central's responses to Conrail's second and third  
7 set of interrogatories. We have a verification  
8 from you for the third.

9 Can you verify Penn Central's  
10 responses to Conrail's second set of  
11 interrogatories?

12 A. What exhibit for this deposition are  
13 you looking at?

14 Q. Exhibit 7 and 8.

15 A. I don't see a verification on 7; is  
16 that correct?

17 Q. I don't either. But I'm asking you  
18 if you do verify these responses since it appears  
19 that no one at Penn Central formerly has?

20 A. I don't know. Maybe the page is  
21 missing or was misplaced when you copied or  
22 collated that. I don't know the answer to that.  
23 I'll go back and confer with counsel, to see if  
24 there was a verification sent to you. And if you  
25 would like a separate verification, I can prepare

1 one.

2 Q. My question is just whether or not  
3 you do verify these responses.

4 A. I would expect them to be accurate  
5 and complete. But it doesn't look like a  
6 verification has been signed.

7 Q. Right. Had you been asked under  
8 oath, would you have signed such a verification?

9 A. I believe so, but I haven't studied  
10 these in some time. And based on my experience  
11 with the law firm of Frost & Jacobs and Mr.  
12 Cunningham and my staff, I would expect them to be  
13 accurate, and they understand what my expectations  
14 are.

15 Q. And, in fact, Conrail's third set of  
16 interrogatories merely asks you to fully and  
17 completely supplement your answers to each previous  
18 interrogatory?

19 A. That's my answer.

20 Q. In fact, you would then by verifying  
21 the third set, be verifying the second set?

22 A. I'm not going to quarrel with that.  
23 Maybe. There isn't a verification there. If you  
24 ask me if it's accurate, I believe it to be  
25 accurate, but I haven't studied it.

1           Q.    I would like you to read  
2   interrogatory number 4, which I believe you can  
3   most easily find.

4           MR. CUNNINGHAM:   Exhibit number,  
5   please?

6           Q.    You can most easily find it in  
7   Exhibit No. 7.

8           A.    Okay.

9           Q.    As well as Penn Central's response to  
10   interrogatory number 4, in the second set on page  
11   4, in the third set on page 2.

12          A.    Yes, I've read it.

13          Q.    Is this a true response?

14          A.    Yes.

15          Q.    Is this a complete response?

16          A.    I believe I already answered those  
17   questions, yes.

18          Q.    This is all the information that you  
19   had available at the time of responding?

20          A.    Yes. Yes. The answer is yes.

21          Q.    Did you review the response at the  
22   time it was written?

23          A.    I believe I reviewed this response  
24   and probably earlier drafts of it, yes.

25          Q.    Did you inquire whether any more

1 responsive information was available?

2 A. I'm sure I probably did.

3 Q. And you were told that this was all  
4 there was?

5 A. Yes. And I also searched my own  
6 memory, relied upon my own experience as to whether  
7 there might not be more information, specifically  
8 as to what was done at the Elkhart Yard, yes.

9 Q. You relied on their recommendations?

10 A. Yes.

11 Q. You were asked to state each fact and  
12 identify each document that Penn Central relied  
13 upon in interrogatories number 4?

14 A. Yes.

15 Q. Are there any facts that you stated  
16 in your responses to interrogatory number 4?

17 A. Are there facts stated, yes. The  
18 document speaks for itself. There are facts.

19 Q. Can you point a fact out?

20 A. Well, if you start in the first  
21 sentence, there is a fact stated that a plaintiff  
22 may only recover its response costs. That's that  
23 fact.

24 Q. That's not --

25 MR. CUNNINGHAM: Wait a minute,

1 please. May the witness finish his answer?

2 Q. Excuse me, if I --

3 MR. CUNNINGHAM: I don't want to  
4 argue with you. Mr. Cioffi, feel free to complete  
5 your answer.

6 A. That's a fact, but go ahead. You  
7 want to ask another question? Go on.

8 Q. I didn't mean legal assertions of  
9 fact, legal assertions as facts. I'm not talking  
10 about grammatically.

11 When someone asks you if you have any  
12 facts to support something, are there any such  
13 facts in this answer?

14 A. Well, the interrogatory states each  
15 fact and please state each document. You asked me  
16 to articulate a fact in the answer. I just did. I  
17 think it's pointless for us to argue whether you  
18 think it's a responsive fact or not. I think it  
19 is. I'm not the final arbitrator of that. All  
20 right. So it's not going to advance the ball for  
21 us to argue about it, but I'll go on if you would  
22 like me to.

23 Q. Yes, please.

24 A. There is a fact in the next sentence  
25 dealing with, and again the document speaks for

1     itself, about Conrail not performing the work  
2     consistent with the National Contingency Plan.

3             Q.     What is the fact there; is that an  
4     assertion?

5             A.     Not consistent with the NCP is a  
6     fact.

7             Q.     Do you have any facts other than  
8     assertions in this response?

9                     MR. CUNNINGHAM:   Well, you're  
10    characterizing. I hate to interrupt. Is this some  
11    kind of test of his knowledge; what are you doing?  
12    I don't understand what your purpose is, Ms.  
13    Landeever.

14            Q.     Go ahead.

15            A.     I stated to you what I think is the  
16    assertion of a fact. What I believe to be  
17    assertion of a fact. The sentence goes on as you  
18    can see, there is an assertion about the fifth line  
19    down about failure to conduct an investigation of  
20    the Elkhart Yard in a cost-effective manner. That's  
21    a fact.

22                     I recognize that you may disagree  
23    with them, and it will be subject to proof at  
24    trial. But they're facts. We'll disagree, that's  
25    what litigation is about. They are facts.

1 Q. Do the facts that you are pointing  
2 out provide any evidence?

3 A. I wasn't finished, but go ahead. Ask  
4 another question.

5 MR. CUNNINGHAM: This is not the  
6 first time --

7 Q. Go ahead.

8 MR. CUNNINGHAM: -- that she has  
9 done this to you.

10 A. The last sentence deals with the  
11 documents, and there is a reference to some  
12 specific documents in the response.

13 MR. CUNNINGHAM: Ms. Landever, let  
14 me point out to you, when you have a question  
15 before this witness, please permit him to complete  
16 his answer before you start another question. Will  
17 you do that for me?

18 MS. LANDEVER: If the witness asks  
19 me --

20 MR. CUNNINGHAM: I'm saying, will  
21 you do that for me?

22 MS. LANDEVER: If the witness needs  
23 me to wait so he can complete his answer, I will do  
24 so.

25 BY MS. LANDEVER:



1           Q.    Can you point out any parts of any  
2 documents that you've listed in your answer that  
3 responded to this interrogatory number 4?

4           A.    Can I point to any part of any  
5 document?

6           Q.    Yes.  You say, or Penn Central says  
7 in its response, "Penn Central will rely upon  
8 documents including those present in US EPA's  
9 administrative record, including but not limited to  
10 Phase I, II and III remedial investigations, the  
11 Phased Feasibility Study for the Conrail Site, the  
12 Hazard Ranking System worksheets and responses to  
13 comments thereon prepared by US EPA, US EPA's  
14 Record of Decision" --

15          A.    What are you reading from?  You lost  
16 me there.

17          Q.    Supplemental answer 4 in Exhibit 8,  
18 page 2 to 3.

19          A.    Okay.

20          Q.    You recite in this supplemental  
21 answer, "many of the documents that have been  
22 generated in this case," is there any specific part  
23 of any of these documents that you can point to as  
24 a more specific response to this interrogatory?

25          A.    Well, if you care to show me the

1 document, perhaps I could.

2 Q. Well, this was the response that Penn  
3 Central provided us.

4 A. Now you've asked me another  
5 question. Can you refer to any specific section of  
6 those documents? And I certainly cannot do it by  
7 memory. So if you have something you want to show  
8 me, I will take the time to look at it and try to  
9 respond to your question. I cannot do it from  
10 memory.

11 Q. Did you have in mind as you drafted  
12 this answer any particular parts of any of these  
13 documents?

14 A. Well, of course. We wouldn't expect  
15 every word of every document to reflect our  
16 contentions, but, yes, there are parts of those  
17 documents. And if you would like to ask us what  
18 parts or when we look and review the documents, we  
19 can tell you that.

20 Q. Why didn't you tell us in response to  
21 the interrogatory?

22 A. Well, the interrogatory says identify  
23 each document. That was done. It didn't say, now  
24 explain what parts of those documents, et cetera,  
25 that kind of detail is, to my knowledge of the

1 rules of procedure, inappropriate really for  
2 interrogatories, and that kind of level of detail  
3 is usually obtained through the deposition of  
4 expert witnesses with the documents in front of  
5 them so they can explain to you what the trial  
6 testimony is going to be like.

7 Many courts, in my experience, the  
8 federal courts around the country would not permit  
9 that level of detail in interrogatories.

10 Q. Do you believe that --

11 A. And finally, your answer didn't call  
12 for that level of detail, or your question, I  
13 should say.

14 Q. Do you believe that anything more  
15 specific than all documents in the case is called  
16 for by this interrogatory?

17 A. Yes.

18 Q. In that case, how did you determine  
19 what specificity was called for?

20 A. By looking at your question and  
21 trying to fairly respond to it. When you asked to  
22 identify documents, and we identify them, I think  
23 that's trying to fairly respond to your question.

24 You've now interposed a new question  
25 today, could you cite to me specifically what

1 section of those documents you're referring to.  
2 You didn't ask that question in your  
3 interrogatory. I think it's inappropriate, quite  
4 frankly, for an interrogatory question.

5 Q. Okay. Let's turn to interrogatory  
6 number 5, which you can find on the second set on  
7 page 5, and third set, page 3.

8 A. Yes, I have it.

9 Q. Can you read the interrogatory and  
10 Penn Central's responses?

11 A. Okay. I've read page 5 of Exhibit 7  
12 and I'm now reading page 3 of Exhibit 8. I've read  
13 them.

14 Q. Is this a true response?

15 A. Yes.

16 Q. Is this a complete response?

17 A. Yes. I've answered that to all the  
18 questions, and my answer applies to the specific  
19 questions as well.

20 MR. CUNNINGHAM: Please don't repeat  
21 questions when we've been here already now almost  
22 four hours. He has answered that question at least  
23 three times. Please don't do it again.

24 Q. Am I to understand then that every  
25 one of these interrogatories is true and complete.

1 and based on all of the information you had at the  
2 time of responding?

3 A. You've already asked me that and I've  
4 already answered, yes.

5 Q. Okay. Did you review the response?

6 A. Yes.

7 Q. Did you inquire whether any more  
8 responsive material was available?

9 A. Yes.

10 Q. And the answer was?

11 A. The answer was that the responsive  
12 material is contained in the answer.

13 Q. There were no additional facts  
14 available at the time of preparing this that were  
15 responsive?

16 A. Yes.

17 Q. What previous discovery are you  
18 referring to in your supplemental answer 5?

19 A. Well, your question is answered again  
20 in the text of the document, it says previous  
21 discovery including information supplied by Mr.  
22 Wilson Elliot, then goes on to identify another  
23 individuals.

24 Q. Is there additional discovery?

25 A. Additional to what?

1 Q. Well, you say previous discovery,  
2 including?

3 A. Yes.

4 Q. Is there additional previous  
5 discovery that you could be more specific about,  
6 other than the Wilson Elliot information?

7 A. Not as I sit here today. Again, this  
8 supplemental answer tried to answer based on  
9 additional information your question number 5. And  
10 if your question to me is: Are there any other  
11 facts responsive to question number 5 that you  
12 haven't disclosed to Conrail, then your answer is,  
13 no.

14 Q. What do you mean by information  
15 supplied by Mr. Wilson Elliot?

16 A. Facts, statements.

17 Q. Could you be more specific?

18 A. I can't. I didn't interview him or  
19 speak with him. Counsel did in Mr. Cunningham's  
20 firm, and the best source of that information would  
21 be Mr. Elliot himself.

22 Q. Well, I'm just trying to understand  
23 your interrogatory response. When you speak of  
24 information supplied by Mr. Elliot --

25 A. We've identified the individual who

1 supplied the information. As I understand the  
2 discovery process, you go and ask him. He's the  
3 best source. It's fairly fruitless and, in fact, I  
4 know it is admissible evidence to get from me. Go  
5 and ask him what he knows about the site, that's  
6 how we learned about it.

7 MR. JAFFE: I'm sorry, I have to  
8 interrupt here for one moment. Our understanding  
9 is that, first of all, it's clearly admissible  
10 evidence, because it's admission of a party  
11 deponent. Secondly, it is not up to you, the  
12 deponent, to determine the best source, it is up to  
13 the person taking the deposition whether it is  
14 relevant, whether it is within the scope of  
15 discovery.

16 The discovery rules don't talk about  
17 the best source anywhere. She asked the question,  
18 she deserved an answer. You're being evasive to  
19 all the questions today. It's just prolonging the  
20 deposition.

21 MR. CUNNINGHAM: I object to that  
22 characterization. We've answered every question.  
23 And as a matter of fact, Mr. Wilson Elliot was  
24 employed by Mrs. Landever's clients for over ten  
25 years, so you can find out everything you want from

1 Mr. Elliot.

2 MS. LANDEVER: That's not -- Excuse  
3 me.

4 MR. JAFFE: That's not relevant,  
5 whether he's the best source.

6 MR. CUNNINGHAM: I'm not going to  
7 argue on the record here. We've got time problems.

8 MR. JAFFE: It will just go a lot  
9 smoother. She asked a question.

10 THE WITNESS: And the answer was  
11 given. Your mischaracterization of my testimony is  
12 totally inaccurate. And the document will speak  
13 for itself.

14 BY MS. LANDEVER:

15 Q. And the document says information  
16 supplied by, and that's as specific as you can be;  
17 is that right?

18 MR. CUNNINGHAM: Again, he's  
19 answered that question.

20 A. That's as specific as I can be in  
21 response to your question today. Yes.

22 Q. Okay. At the bottom of that  
23 paragraph, the last sentence, again, you refer to,  
24 "previous discovery also indicates," can you be  
25 more specific?



1           A.     Would you direct me to a line? I  
2     can't see it.

3           Q.     It's the sixth line from the bottom  
4     on page 3.

5           A.     Yes. And your question is?

6           Q.     Can you be more specific than merely  
7     previous discovery?

8           A.     No, I cannot.

9           Q.     Okay. Did you draft this response?

10           MR. CUNNINGHAM: That's been asked,  
11     too, go on.

12           A.     I don't believe I did. Initially --  
13     I think I have explained the process. These drafts  
14     are done in consultation with counsel, and I cannot  
15     sit here today and tell you which answers I drafted  
16     60 percent of or 30 percent of. It's a  
17     collaborative effort.

18           Q.     You believe that counsel drafted this  
19     response?

20           A.     I believe that counsel collaborated  
21     with me in responding to them. What percentage he  
22     drafted or she drafted and what percentage I  
23     drafted, I can't sit here and tell you that.

24           MR. CUNNINGHAM: Let's go off the  
25     record.

1 (Off the record.)

2 BY MS. LANDEVER:

3 Q. Specifically, just about this last  
4 sentence, if you cannot recall or don't know what  
5 previous discovery means in this sentence, did you  
6 draft this response?

7 A. I've answered that. It was a  
8 collaborative effort.

9 Q. Okay.

10 A. If you're asking me who wrote those  
11 words, I don't know.

12 Q. But you don't know what previous  
13 discovery means in that sentence?

14 A. Previous discovery is referring to  
15 interrogatory answers, it's referring to responses  
16 to requests for production of documents, it's  
17 referring to deposition testimony, it's referring  
18 to information that might have been exchanged  
19 informally.

20 The point is this: To get the  
21 specific facts, all I'm asking you is, we've  
22 identified the people as we are required to do, you  
23 have their names. It will be very fruitful, much  
24 more fruitful for you to go to them and ask them  
25 about these facts. That's how discovery proceeds,

1 you all know that.

2 Q. I believe this final sentence in the  
3 paragraph --

4 MR. CUNNINGHAM: Off the record.

5 (Off the record.)

6 MS. LANDEVER: I really would  
7 appreciate it if we don't continue with this. We  
8 all have planes to catch.

9 MR. CUNNINGHAM: Why would you ever  
10 ask a question about what is previous discovery? I  
11 don't understand the purpose of that. Previous  
12 discovery is --

13 MS. LANDEVER: These sidebar  
14 conversations are not necessary. I would like to  
15 just ask the witness --

16 THE WITNESS: I've answered it. Do  
17 you have another question?

18 BY MS. LANDEVER:

19 Q. It appears to me, this fourth  
20 sentence, "previous discovery also indicates," it's  
21 not referring to any of the individuals that you  
22 have named, so previous discovery also indicates  
23 that there was no change in chemical usage.

24 A. I just explained to you what previous  
25 discovery means in my understanding. Is there

1 something about that answer you don't understand?

2 Q. Just to make sure that I got it,  
3 previous discovery means all discovery previously  
4 done in this case; is that right?

5 A. I think that's a fair understanding,  
6 yeah.

7 Q. Have you learned of any more  
8 information since drafting this interrogatory that  
9 is responsive?

10 A. Not to my knowledge, no.

11 Q. Okay. And is that the case as well  
12 with interrogatory number 4?

13 A. That would be correct.

14 Q. Okay. Moving onto interrogatory  
15 number 6, which you can find in the second set on  
16 page 6, and in the third set on page 4. Having  
17 already established that this is a true, complete  
18 response answer based on all the information you  
19 had available; is this all of the information you  
20 have now that is responsive?

21 A. Yes.

22 Q. In your supplemental answer 6 you  
23 refer us back to supplemental answer 5.

24 Do you have any different definitions  
25 or more specific explanations of the phrase

1 "previous discovery" as used in supplemental  
2 answer 5 or information as used in supplemental  
3 answer 5?

4 A. No.

5 Q. Could you please read interrogatory  
6 number 7 and Penn Central's responses in the second  
7 set, page 6; third set, page 4.

8 A. I've reviewed the sections you asked  
9 me to.

10 Q. Okay. Once again, I understand that  
11 we have established that this response is true,  
12 complete, based on all the information you had at  
13 the time of responding and was reviewed by you?

14 A. Yes.

15 Q. In your answer 7 in the second set of  
16 interrogatories, you speak of all discovery done,  
17 all documents produced, and all depositions taken.

18 Can you be any more specific?

19 A. You're directing my attention to the  
20 supplemental answer 7?

21 Q. No. Your original -- second set in  
22 response to 7.

23 A. I think the supplemental answer  
24 attempts to be more specific.

25 Q. All right. Let's look at the

1 supplemental answer. You speak once again of your  
2 answer to interrogatory 5, which referred to  
3 previous discovery and information.

4 Can you be any more specific about  
5 those answers with reference to interrogatory 7?

6 A. I direct your attention to the last  
7 sentence in supplemental answer 7. That's our  
8 attempt to give, to identify for you the people who  
9 have more specific information.

10 Q. Okay. Before we turn to that last --

11 MR. CUNNINGHAM: Are you finished  
12 with your answer?

13 THE WITNESS: I'm finished, yes. Go  
14 ahead.

15 Q. Before we turn to the last sentence,  
16 let me just make sure: In the first sentence,  
17 since these are different points that are being  
18 made, you speak of previous discovery.

19 And once again, do you have any more  
20 specific information?

21 A. No.

22 Q. Okay. And the second sentence on a  
23 new point you also speak of previous discovery  
24 indicating?

25 A. No.

1 Q. Can you be any more specific?

2 A. No.

3 Q. All right. Now, to this third and  
4 last point that you were just noting, you speak of  
5 correspondence between Wilson Elliot and Mr.  
6 Barklay and correspondence between Wilson Elliot  
7 and Mr. Connelly?

8 A. Yes.

9 (Cioffi Exhibit Nos. 10A through 10G were marked  
10 for identification.)

11 Q. I have marked as Exhibit 10A, a  
12 letter from Wilson Elliot to Mr. Barklay. Can you  
13 please read that letter?

14 A. I have read it, yes.

15 Q. Where in this Wilson Elliot letter is  
16 there evidence that Conrail caused the release of  
17 hazardous substances?

18 A. Well, again, this may or may not be  
19 the only letter. I don't know without going back  
20 and reviewing --

21 Q. Well, let's --

22 A. -- the facts.

23 Q. Let's look at this letter in  
24 particular. There's no evidence in this letter  
25 that Conrail caused the release of hazardous

1 substances, is there?

2 MR. CUNNINGHAM: Objection. This is  
3 argumentative. You're prefacing the question on  
4 how you want the deponent to answer. That's just  
5 improper. May I point out to you also Rule 30 in  
6 the area of harassment and annoyance. We're  
7 reaching that point.

8 MS. LANDEVER: Mr. Cunningham, if  
9 you have an objection, please make it. And if you  
10 want to instruct the witness not to respond, you  
11 can do that.

12 MR. CUNNINGHAM: That's not my only  
13 option. There are several others that I could use  
14 here. I've been extremely patient with you, since  
15 you are rather new, and I don't want to use the  
16 motion to suspend this deposition under 30 on one  
17 of your first depositions.

18 MS. LANDEVER: If you need to do  
19 that, I trust you will.

20 MR. CUNNINGHAM: Please move through  
21 this.

22 BY MS. LANDEVER:

23 Q. Please answer the question. Is there  
24 any evidence in this letter that Conrail caused the  
25 release of hazardous substances?



1           A.     Well, again, this document read with  
2 other documents in evidence could certainly support  
3 that conclusion.

4           Q.     In this document?

5           A.     Yes.

6           Q.     Can you point to something?

7           A.     I'll direct your attention to the --  
8 really the first paragraph, "continuing problems at  
9 the Elkhart Yard." The third paragraph, "your  
10 commitments have fallen short." The fourth  
11 paragraph, "concern in the area of the drinking  
12 water," "employees were told this would be taken  
13 care of immediately," "Conrail providing safe and  
14 healthy workplace."

15                 All of those read together with other  
16 evidence in the case could very well lead a trier  
17 fact to draw a conclusion; so, yes, it is evidence.

18           Q.     Do you have any other evidence?

19           A.     You're quarreling with me over the  
20 quality of the evidence, and that's simply not  
21 appropriate. It is evidence, yes.

22           Q.     Do you have other evidence that in  
23 conjunction with this letter that would indicate or  
24 show that Conrail has caused the release of  
25 hazardous substances?

1           A.    My understanding is there is other  
2 evidence which read in conjunction with this  
3 document and other documents including technical  
4 data concerning the spill will lead a trier fact to  
5 that conclusion, yes, sir.

6           Q.    Is there any mention in this letter  
7 of Conrail causing the release of any hazardous  
8 substance?

9           A.    The document speaks for itself. I  
10 said that that inference, together with other  
11 documents, could be drawn from this letter, yes.

12          Q.    But there is no mention in this  
13 letter then?

14          A.    That's not what I said.

15          Q.    Is there any mention in this letter?

16          A.    I said that inference could be drawn,  
17 yes. When you're talking about concerns over  
18 drinking water, that would suggest to me that  
19 perhaps something was indeed discharged into the  
20 drinking water which contaminated that.

21          Q.    But that would equally suggest or  
22 might equally suggest that Penn Central had caused  
23 the release of hazardous substances?

24          A.    This is directed to Conrail. So, no,  
25 that's not, I don't think, a logical inference.

1 Q. What are the many inferences that  
2 could be drawn from the fact that Mr. Elliot is  
3 concerned about drinking water?

4 A. I just articulated them for you.  
5 There may be other ones that come to me over time.  
6 That's all I can think of at this time.

7 Q. All you can think of is that this  
8 means Conrail caused the release of hazardous  
9 substances?

10 A. It seems to me Conrail contaminated  
11 the drinking water with the release of some  
12 hazardous substances, yes.

13 Q. And that is the sentence that  
14 suggested that to you?

15 A. I read to you three or four passages,  
16 when read together, leads me to that inference,  
17 yes.

18 Q. Okay. I would like to give you  
19 another letter, memorandum that has been cc'd to  
20 Mr. Elliot. It's dated August 2nd, 1983.

21 A. I've read it.

22 Q. Where in this memorandum, if  
23 anywhere, is there evidence that Conrail caused the  
24 release of hazardous substances?

25 A. The document appears to be discussing

1 the contamination of the drinking water. It  
2 articulates that there's been discoloration and  
3 taste.

4 Q. Does it also articulate that the  
5 worry --

6 A. I wasn't finished.

7 Q. Go ahead.

8 A. That "discoloration and taste do not  
9 an to be suitable for human consumption;" it seems  
10 to be a very logical and strong inference to draw  
11 from this that there has been contamination of the  
12 water from Conrail's operations.

13 Q. Could you read the beginning of that  
14 sentence that you just quoted from?

15 A. Yes. "Referring to the water at the  
16 T&E Building," is that what you're referencing?

17 Q. Beginning the sentence you --

18 A. "I realize this water has been tested  
19 and proved to be satisfactory," yes.

20 Q. Okay. Would that negate an inference  
21 that there is a release of hazardous substances?

22 A. No, not at all. First of all, I  
23 don't know what the writer means by satisfactory.  
24 I don't know if he's referring to maximum  
25 contamination limits or what. Clearly he's

1 describing a situation where the water is not  
2 suitable for human consumption. To me, that's  
3 contamination.

4 Q. The water, or the discoloration and  
5 taste?

6 A. Both. The discoloration and taste,  
7 and the statements by the writer of this that it  
8 does not appear to be suitable for human  
9 consumption. All those suggest to me some  
10 contamination of the water.

11 Q. That discoloration and taste aren't  
12 suitable?

13 A. I don't understand your question.

14 Q. Is this one sentence your basis for  
15 saying that this letter is evidence that Conrail --

16 A. No, there's more. There's the  
17 suggestion in the next paragraph that the water  
18 lines be flushed out. Again, it seems to be a  
19 reasonable inference that water lines are flushed  
20 out if there's some contaminant in them. And in  
21 the context of this memo, it seems to me that's  
22 what's being suggested.

23 Q. Okay.

24 A. There's the suggestion in the third  
25 sentence of that second paragraph that after

1 flushing, it be retested. Suggesting to me that  
2 contamination exists and they want to determine if  
3 flushing will resolve the contamination problem.

4 Q. Okay.

5 MR. CUNNINGHAM: Are you finished?

6 A. I wasn't finished.

7 Q. I appreciate your response, but we're  
8 going a little bit further than we need to.

9 A. No, you asked me a question, I'm  
10 responding to it. Please allow me to finish.

11 Q. Go ahead.

12 A. There's a reference to a laboratory  
13 to do some additional testing with respect to the  
14 water; all suggest to me that there is  
15 contamination and a problem. By the date of the  
16 letter, a problem which was caused by and during  
17 Conrail's ownership and operation of the yard.

18 Q. So based upon the date of 1983, you  
19 believe this memorandum provides evidence that  
20 Conrail in particular caused the release of a  
21 hazardous substance?

22 A. Yes. Yes, it does.

23 Q. Okay. I would like you to read what  
24 has been marked as Exhibit 10C, it's a letter from  
25 Mr. Elliot to Mr. Barklay.

1 MR. CUNNINGHAM: Have these previous  
2 documents been marked?

3 MS. LANDEVER: Yes.

4 MR. CUNNINGHAM: Please indicate, if  
5 you will, what the exhibit numbers are so we all  
6 know.

7 MS. LANDEVER: I have.

8 Q. Could you please read --

9 A. I have.

10 Q. -- document 10C?

11 A. Go ahead.

12 Q. Where is any basis in this letter for  
13 believing that Conrail caused the release of  
14 hazardous substances?

15 A. Well, there is a continuing concern  
16 about water testing as expressed in the sentence  
17 numbered one in this letter, which suggests to me  
18 chronologically in comparison with Exhibit 10B and  
19 10A, that there's an ongoing problem there with  
20 respect to the water, which given the date of the  
21 letter and the items we discussed in the prior  
22 correspondence, leads to a strong inference that  
23 there was some sort of spill or discharge during  
24 Conrail's ownership which is attempted to be  
25 addressed with the water testing.

1 Q. Okay. I would like you now to read  
2 what has been marked as Exhibit 10D.

3 A. Yes.

4 MR. CUNNINGHAM: How much more time  
5 are we talking about? It's now 25 to 7:00.

6 A. I've read the documents very  
7 briefly. Go ahead.

8 Q. Okay. I refer you to the second  
9 actual paragraph of this memorandum.

10 A. Yes.

11 Q. Is that the paragraph that provides  
12 any mention of water or potential water problems in  
13 this memorandum?

14 A. There's a mention of rain in the next  
15 paragraph, but without studying the document in  
16 detail, I'm going to accept your representation.

17 Q. It's not my representation, it's a  
18 question. Is that the relevant -- is that the  
19 relevant paragraph in this letter?

20 A. Relevant to what?

21 Q. This was your response. Your  
22 response is that these documents indicate Conrail  
23 knew of the presence of hazardous substances in  
24 groundwater.

25 A. Well, that certainly suggests to me



1 that that assertion is correct in support by this  
2 document, yes, and specifically that paragraph.

3 Q. Okay. Where is there evidence in  
4 that paragraph that Conrail caused the release of  
5 hazardous substances?

6 A. Well, it appears to me Conrail is  
7 continuing to address this problem of water lines.

8 Q. Of bad tasting water?

9 MR. CUNNINGHAM: Again. Please,  
10 you're cutting the witness off.

11 A. I don't know why you want to argue  
12 with me about the document. It's not my  
13 interpretation.

14 Q. I'm trying to understand your  
15 response.

16 MR. CUNNINGHAM: Can we go off the  
17 record?

18 THE WITNESS: You don't want to let  
19 me finish. You're arguing with me about my  
20 responses, and it serves no purpose. I'm happy to  
21 entertain that, if we want to keep doing it. Now,  
22 your request is with respect to this paragraph?

23 Q. What if anything in this memorandum,  
24 and you've pointed specifically to this paragraph,  
25 indicates that Conrail caused the release of

1 hazardous substances?

2 A. Well, there's the flushing of the  
3 lines, which suggests to me that some contaminant  
4 has gotten into them. There's the report that it  
5 tastes better, and then a reference to iron in the  
6 water. Then there's -- I can't read the copy,  
7 because it's obliterated here.

8 The sentence reads something like Mr.  
9 Elliot asked something, I assume that's a petroleum  
10 pollutants test could be run, suggesting to me that  
11 there's been some petroleum contaminant introduced  
12 to the water. Maybe the next paragraph suggests  
13 that it's also a result of runoff. I don't know.  
14 But it seems to me that there's very specific  
15 mention of a petroleum contamination into the water  
16 supply.

17 Again, given the time of the  
18 memorandum and the fact that it had been almost 7  
19 years since PCTC had operated the yard, that it  
20 strongly suggested to me that Conrail created this  
21 problem and was trying to address it.

22 I might add that there's also no  
23 evidence, to my knowledge, that Conrail wrote to  
24 the Penn Central Corporation at this point in time  
25 making the allegation that PCTC was somehow

1 responsible for the contamination that appears to  
2 be addressing in all these documents.

3 Q. I would like you to now read Exhibit  
4 10E, which is a memorandum from Mr. Barklay to Mr.  
5 Elliot dated September 8th, 1983.

6 MR. CUNNINGHAM: Exhibit number,  
7 please?

8 A. Ten E, I've read it.

9 Q. What is the relevant part of this  
10 memorandum that your response to supplemental  
11 interrogatory answer 7 refers to?

12 A. Paragraph 3. And again, based on a  
13 quick review, I don't see anything else  
14 immediately.

15 Q. Does this memorandum indicate that  
16 the water has been tested and is okay for human  
17 consumption?

18 A. That's what the document says, yes.

19 Q. Okay.

20 A. It goes only to say, we're using the  
21 bottled water for drinking purposes.

22 Q. Due to what?

23 A. It says heavy accumulation of iron in  
24 the water.

25 Q. Okay. Where in this memorandum is

1 there evidence that Conrail caused the release of  
2 hazardous substances?

3 A. There is a continuing concern with  
4 the water supplies. My assumption and inference  
5 that that concern was generated by some spill or  
6 discharge during Conrail's ownership and operation  
7 of the yard.

8 Q. Based on the date?

9 A. Based in part on the date, yes.

10 Q. And in what other parts?

11 A. Well, based on the fact that Conrail  
12 at this point in time did not write or otherwise  
13 inform or assert a claim against the Penn Central  
14 Corporation alleging that this spill or the  
15 contamination that's being addressed was caused by  
16 PCTC during its ownership or operation of the  
17 plant.

18 Q. Is there any indication in this  
19 memorandum that the cause of the bad taste in the  
20 water was the release of hazardous substances?

21 A. Well, the water test is a reference  
22 to that, especially when you read this document in  
23 conjunction with the other Exhibit 10A through D.

24 Q. Doesn't this document say that the  
25 water has been tested and is okay?

1           A.     That's what the document says.

2           Q.     So then there is no evidence in this  
3 memorandum that there was a release of hazardous  
4 substances?

5           A.     I disagree. The continuing  
6 preoccupying with water testing and water quality  
7 is evidence that there was a release.

8           Q.     I give you now Exhibit 10F, which is  
9 a letter from Wilson Elliot to Donald Connelly,  
10 dated December 26, 1983.

11          A.     I've read the document.

12          Q.     Where in this letter is there  
13 evidence that Conrail caused the release of  
14 hazardous substances?

15          A.     Well, there's a section here called  
16 health hazards, which, again, refers to the water  
17 supply. It's not very legible from the copy you  
18 gave me.

19          Q.     I should apologize, as you can see  
20 from the copy, this is a fax from Frost & Jacobs.

21          A.     Again, the continuing preoccupation  
22 with water quality suggests to me that there had  
23 been a spill or a discharge and Conrail was  
24 concerned about it.

25          Q.     And what is the problem that is being

1 addressed in this December 26th, letter?

2           A. It doesn't say. The analysis of our  
3 water supply, and I don't know what that word is,  
4 until the cause of the odor can be determined.

5           Q. So it's an odor that is the problem?

6           A. Yes. And we've seen earlier  
7 reference to discoloration and odor and we've also  
8 seen references to laboratory reports, but I don't  
9 have those in front of me. It strongly suggests to  
10 me that there's a water quality problem that  
11 Conrail is trying to address.

12                   The time frame is more than 7 years  
13 after our operation ceased, and at no time in 1983  
14 or the years around 1983 did Conrail ever notify us  
15 that it believed PCTC to be responsible for this  
16 discharge or this water problem.

17           Q. So clarify your response just now  
18 though, the laboratory tests mentioned in the  
19 previous letters have all been okay for human  
20 consumption; is that right?

21           A. I don't know. I haven't read the lab  
22 reports.

23           Q. But the letters that you have been  
24 commenting on --

25           A. The documents speak for themselves.

1 There have been reservations to okay for human  
2 /KOPB /TUPBEGZ, other /TKUPBLGS said it wasn't.

3 Q. Not based on laboratory tests?

4 A. I don't know what the information for  
5 the --

6 Q. No laboratory tests were mentioned?

7 A. I don't know.

8 Q. Notice letters?

9 A. Itself letters speak for themselves.  
10 Some letters mentioned laboratory tests, some  
11 didn't.

12 Q. Is there any basis in this letter for  
13 your response in supplemental answer number 7, that  
14 Conrail knew of the presence of hazardous  
15 substances or caused the release of hazardous  
16 substances?

17 A. Yes, I've just articulated for you.

18 Q. I understand that is based on the  
19 comment about odor?

20 A. Well, it's a continuation  
21 preoccupation with water quality. . A company can  
22 is not pre-occupied when the quality of water if it  
23 doesn't have some reason to believe that the water  
24 had been contaminated.

25 Q. Okay. I give you now a letter?

1 THE WITNESS: How much longer do you  
2 have?

3 MS. LANDEVER: Not much longer.

4 THE WITNESS: You originally  
5 estimated about an hour. You've been about an hour  
6 and 20 minutes.

7 MS. LANDEVER: I think I have at  
8 least that much time to take this deposition. We  
9 could have held it over until tomorrow. You're not  
10 available until tomorrow?

11 THE WITNESS: I'm not /AURPG. What  
12 does that mean?

13 MS. LANDEVER: We'll see.

14 MR. CUNNINGHAM: Off the record.

15 (Off the record.)

16 (The record was read back by the court reporter.)

17 BY MS. LANDEVER:

18 Q. Letter is Exhibit 10-G., dated  
19 February 1984, to Mr. Connelly. And we appear to  
20 have received only the first two pages of it, but  
21 since Paul Allen's secretary, faxed it to me in  
22 response to my request the for the Wilson Elliot  
23 /SORPBLS, I think we can assume that the letter is  
24 from Wilson Elliot and the relevant information is  
25 on the second page. Willing?



1           A.    I've read the document.

2           Q.    Again, with this letter, where is the  
3 evidence that Conrail knew of the presence of  
4 hazardous substances or that Conrail caused the  
5 release of hazardous substances?

6           A.    /KPWEPB, there's a continuing  
7 preoccupation with water supply and water quality,  
8 which suggests that there was some sort of  
9 discharge or contamination. There's the statement  
10 the /TPHAPLS of water /PHUDZ /TKEUPBL until the  
11 code /\*UTZ cats the /TKOEDZ /TKHOR /K-BT  
12 determined. I don't know from in documents whether  
13 the /TKEULS /KWHRORGS problem has dissipated or  
14 maybe itself discoloration /TPHRAOUPPL has moved  
15 elsewhere. I don't know.

16          Q.    I'm not asking you to guess about  
17 this document. I'm just asking you good /KWROURPZ  
18 use of it in /STPOPBLS?

19          A.    Again, I'll reiterate my prior  
20 answer, you needs to read these documents together  
21 /AFPBLDZ /EUFDZ /THEUFLTSDZ it lead very strongly  
22 to the inference that there was a water quality  
23 problem, Conrail was re-ask occupied with it and  
24 that it certainly suggests that the /KORPBLS on the  
25 whole that there was some sort of discharge of a

1           A.     I've read the document.

2           Q.     Again, with this letter, where is the  
3 evidence that Conrail knew of the presence of  
4 hazardous substances or that Conrail caused the  
5 release of hazardous substances?

6           A.     Again, there's a continuing  
7 preoccupation with water supply and water quality,  
8 which suggests that there was some sort of  
9 discharge or contamination. There's the statement,  
10 "the analysis of our water supply must continue  
11 until the cause of the odor can be determined." I  
12 don't know from this document whether the  
13 discoloration problem has dissipated or maybe the  
14 discoloration has moved elsewhere. I don't know.

15          Q.     I'm not asking you to guess about  
16 this document. I'm just asking you your use of it  
17 in response.

18          A.     Again, I'll reiterate my prior  
19 answer: You need to read these documents together,  
20 and I think it leads very strongly to the inference  
21 that there was a water quality problem. Conrail  
22 was preoccupied with it, and that it certainly  
23 suggests that, the correspondence on the whole,  
24 that there was some sort of discharge of a  
25 contaminant and it happened during Conrail's

1 ownership and operation of the yard.

2 Q. Does this letter specifically speak  
3 of bacterial iron deposits that cause the odor and  
4 taste problems in our water supply?

5 A. It does say that, yes.

6 Q. Given that comment, what is your  
7 basis for asserting that Conrail knew of hazardous  
8 substances or Conrail caused the release of  
9 hazardous substances?

10 A. What this writer, and I -- there's no  
11 indication exactly who wrote it.

12 Q. As I said, I think we can assume it  
13 was Mr. Elliot.

14 A. Fine.

15 Q. But their writer, it seems to me is  
16 speculating about estimates on a filtration system,  
17 that he or she hopes will remove bacteria?

18 A. Yes, ma'am. Iron deposits, there's a  
19 conclusion that cause the odor and taste problems.  
20 I don't know how reliable that conclusion is. I  
21 don't believe if that was the problem -- oftentimes  
22 in these environmental sites you'll find people  
23 believe the problem to be one thing and try to  
24 remedy it with a particular remedy that's  
25 ineffective, because they're not treating the

1 appropriate cause of the problem.

2 Q. But, in fact, this letter does  
3 indicate that Mr. Elliot, at least, believes that  
4 removal of the bacterial iron deposits will solve  
5 the odor and taste problems in the water supply; is  
6 that right?

7 A. Well, he's talking about a filtration  
8 system to remove bacterial iron deposits, and then  
9 he's speculating that the odor and taste problems  
10 in the water will dissipate after that happens.

11 Q. Okay. Now --

12 A. Now, we do know historically after  
13 that point in time that problems in the water  
14 supply didn't dissipate. That they, as a matter of  
15 fact, continued and it --

16 Q. But --

17 A. It seems to be a reasonable inference  
18 that he was mistaken.

19 Q. Do you know that this water supply  
20 problem is the problem that we are concerned with  
21 today that you are referring to?

22 A. I think it could very well be.

23 Q. Do you have any evidence to that  
24 effect?

25 A. Again, if you read the correspondence

1 as a whole, for the reasons I've been articulating  
2 the last hour, yes.

3 Q. So your evidence is this packet of  
4 Wilson Elliot letters?

5 A. Yes, and the other items we  
6 mentioned.

7 Q. Do you have any other evidence,  
8 meaning other than this packet of Exhibits 10A  
9 through G that produces evidence in response to  
10 supplemental interrogatory 7?

11 A. Other than what we've discussed in  
12 terms of previous discovery, et cetera. Is that  
13 your question?

14 Q. Yes.

15 A. No.

16 Q. Okay.

17 A. Not at the present time.

18 Q. Not at the present time, because you  
19 have no such information or because there are other  
20 documents or sources?

21 A. Because discovery is ongoing. Our  
22 fact investigation is ongoing, period.

23 Q. In that case, perhaps I should  
24 rephrase the question: Is this response a complete  
25 response to interrogatory 7?

1           A.     I've answered that question several  
2 times. The answer is, yes.

3           Q.     I thought you had. But I thought you  
4 just said that it is not complete?

5           A.     I did not say that. Did I use the  
6 words not complete in my last answer? Read back my  
7 last answer.

8 (The answer was read back by the court-reporter.)

9           A.     I didn't mention in there at all that  
10 these answers were not complete. I didn't mean to  
11 suggest they were not complete. I said that as a  
12 result of ongoing fact investigation and discovery,  
13 additional facts may be learned at some point in  
14 time.

15           Q.     So, in other words, this answer was  
16 complete as of your response on May 6th?

17           A.     Yes, of course. Yes.

18           Q.     Okay. We can move to interrogatory  
19 8. You can find it in your responses in the second  
20 set on page 7, in the third set on page 4.

21           A.     I've read them, yes.

22           Q.     Your response is see answer 7.

23           A.     Yes.

24           Q.     Once again, did you mean anything or  
25 can you be any more specific by the phrases used in

1 supplementary answer 7 which also includes  
2 supplementary answer 5 about previous discovery,  
3 information supplied by Elliot, or the other  
4 mentions of previous discovery?

5 A. No. And I think we also mean to  
6 suggest to you that these fact witnesses may have  
7 additional information and probably do, but to the  
8 extent of our knowledge, we've identified them,  
9 they're there and available for your interrogation.

10 Q. So the fact witnesses you speak of  
11 are whom?

12 A. Well, you've raised Mr. Elliot in  
13 your question. That's who I was referring to.

14 Q. That's based on your --

15 A. There's one -- There's one fact  
16 witness.

17 Q. Is there any other?

18 A. We represented other fact witnesses  
19 in here, and I think in the course of the discovery  
20 in the case in whole disclosed other people. If  
21 your question is other people other than those who  
22 have been disclosed, I'm not aware of any.

23 Q. I believe this is a supplemental  
24 interrogatory question 8, and you have said that  
25 you answered these interrogatories separately. I

1 see in your "see answer 7" and then answer 7 also  
2 says "see answer 5," I see Mr. Wilson Elliot and  
3 Mr. Kenneth mentioned?

4 A. Yes.

5 Q. Are there any other individuals who  
6 are appropriate for this response?

7 A. Not to my knowledge.

8 Q. Once again, can you be any more  
9 specific than the documents from the whole case in  
10 your reference?

11 A. What reference to documents in this  
12 whole case are you referring to?

13 Q. Well, your response to interrogatory  
14 8 is "see answer 7," answer 7 speaks of previous,  
15 discovery, which we've discussed as all discovery  
16 in the case, and previous discovery is also  
17 mentioned in supplemental answer 5.

18 A. Yes.

19 Q. And you speak of documents including  
20 but not limited to those referred to in  
21 supplemental answer 4, and going back to  
22 supplementary answer 4, you note documents  
23 including US EPA administrative records, et cetera,  
24 et cetera, essentially the documents of this case  
25 formally created by U.S. EPA, or I think you also



1 referred to documents created by GTI.

2 Can you be any more specific?

3 A. Without having the documents in front  
4 of me, no, I cannot.

5 Q. When you drafted this interrogatory  
6 or when you reviewed the interrogatory, the  
7 response that someone else drafted, did you look  
8 for more specificity?

9 A. I don't understand your question. I  
10 provided an answer and saw to it that the  
11 corporation provided an answer that we felt was  
12 responsive, as I defined it earlier. I attempted  
13 to fairly meet your interrogatory and identify  
14 individuals and documents in which you can find  
15 additional information by way of fax, either via  
16 deposition or your own review of those documents.

17 Q. When you say you identified documents  
18 and individuals, you mean that you referred us to  
19 all previous discovery done; is that right?

20 A. And there are other specific  
21 documents mentioned as we've already discussed.

22 Q. But can you refer to any specific  
23 parts of any of those large documents?

24 A. I just answered that question. No,  
25 not without those documents in front of me.

1 Q. Once again, did you inquire whether  
2 there was any more responsive information available  
3 at the time?

4 A. Yes.

5 Q. And you were told that this is all  
6 there was?

7 A. That's correct.

8 Q. Okay. And have you learned of any  
9 more information that is responsive since  
10 responding on May 6th?

11 A. Supplemental answer?

12 Q. Yes.

13 A. No, not to my knowledge.

14 Q. I would like you to read  
15 interrogatory number 9 in Penn Central's Response  
16 notice second set, it's page 7 and third set is  
17 page 5.

18 A. Yes, I've read them.

19 Q. What did you mean by detailed  
20 appraisals?

21 A. Which line are you referring me to?

22 Q. It's the last sentence of  
23 supplemental answer 9, the third line from the  
24 bottom of the page of the answer.

25 A. Yes. Well, in the course of the

1 valuation case, and your client is very familiar  
2 about this terminology, railroad yards, buildings,  
3 assets were appraised as they would be in any  
4 post-condemnation proceeding, and we're referring  
5 to the appraisals that took place in that process.

6 Q. Are you referring to any specific  
7 appraisals?

8 A. Well, generally what I'm referring to  
9 are the appraisals in that process of trying to  
10 ascertain the value of assets being conveyed, which  
11 would include the rail yard along with really  
12 hundreds of thousands of other assets. But there  
13 was a concerted effort on the part of the  
14 government with, I believe the assistance of  
15 Conrail from time to time on its side of the case,  
16 to appraise this property, and on Penn Central's  
17 side to appraise the property.

18 There were independent appraisal  
19 sources for both companies at work, and it is my  
20 understanding that the government had its own  
21 appraisers looking at the rail yard and other  
22 places. I've never seen those appraisals. It's my  
23 understanding that they exist. They were used and  
24 referred to in the valuation case in proceedings  
25 before the special court as to what the value of

1 these assets should be, should it be one hundred  
2 billion dollars, which is Penn Central's position,  
3 or should it be 0, which was the government's  
4 position.

5 So I'm referring generally to those  
6 appraisals. I don't know that any of them exist.  
7 And as I sit here today, don't know if one  
8 specifically exists on our side for Elkhart. I'll  
9 look into that again to see if it does.

10 Q. As to when you answered interrogatory  
11 number 9, which called for documents that Penn  
12 Central relied upon to support its contention that  
13 Conrail has waived and/or is estopped from  
14 asserting any claims against Penn Central, you did  
15 so without knowledge of any specific detailed  
16 appraisals?

17 A. No. There were appraisals. And it's  
18 also done in the context, if you read the whole  
19 answer, supplemental answer number 9, in the  
20 context of the Valuation case, and the transfer of  
21 that property as-is, where-is.

22 Specifically Conrail and the United  
23 States Government appropriate the property in an  
24 as-is company. Much of the property was  
25 dilapidated, contamination at sites was known. I

1 think we've articulated in our papers at the  
2 special court; the extent of the knowledge was  
3 contamination at the Elkhart Yard.

4                   There was widespread knowledge  
5 by both Conrail, it's our position, and the  
6 government, of PCB contamination at Paoli,  
7 P A O L I, Yard. This knowledge, along with the  
8 general deteriorating condition of the assets was  
9 taken into consideration by the parties in fixing  
10 consideration.

11                   In other words, our position in the  
12 Valuation case is Penn Central received the  
13 constitutional minimum required for the Elkhart  
14 Yard and all other property conveyed. That price  
15 was the total price for all the assets, took into  
16 consideration the less than pristine condition of  
17 the assets.

18                   Q. But getting back to my question:  
19 Your reference to detailed appraisals in response  
20 to interrogatory number 9 --

21                   A. Yes.

22                   Q. -- is not based on any knowledge of  
23 any relevant specific detailed appraisals; is that  
24 right?

25                   A. No. It's based on a belief. Your

1 question calls for information or facts supporting  
2 our defense that Conrail has waived or now is  
3 estopped. It's our belief that Conrail either  
4 separately or together with the government  
5 conducted detailed appraisals of the assets  
6 received.

7 Q. But you do not know of any  
8 specifically?

9 A. I cannot cite you to one particular  
10 document at this point in time. No.

11 Q. Can you cite me to more than one, or  
12 you can't give me a specific at all?

13 A. I don't know. I would have to go  
14 back and review our document request, both here and  
15 the Valuation case to see if they have been  
16 produced. I've explained to you the general  
17 procedure and why we believe that detailed  
18 appraisals still exist.

19 Now, documents in the possession of  
20 Conrail and the government that haven't been  
21 produced to us, I think it's fair for us to rely  
22 upon our belief that they exist and pursue them  
23 through discovery.

24 Q. Does Penn Central have any detailed  
25 appraisals?

1           A.    I don't know specifically about the  
2 Elkhart Yard. I just represented to you, but I'll  
3 go back and check. It may have already been  
4 produced to you; if we do have it -- if we do have  
5 it, it should have been produced.

6           Q.    Are you saying then that supplemental  
7 answer 9 is not complete as it is written?

8           A.    I don't want to read back my other  
9 prior answer. I did not say that, no.

10          Q.    It is complete in and of itself?

11          A.    Yes.

12          Q.    With no reference to any specific  
13 detailed appraisals, and you've said, no knowledge  
14 of any relevant detailed appraisals; is that right?

15          A.    My answer is complete.

16          Q.    And the answer to that question --

17          A.    I believe I've already answered it.  
18 It is complete and was complete based on our  
19 knowledge of May 4th, 1994.

20          Q.    Have there been any detailed  
21 appraisals done since May 4th?

22          A.    Not that I know of.

23          Q.    In general, have you learned of any  
24 more information that is responsive to this  
25 interrogatory since May 4th?

1 A. No.

2 Q. Turning to interrogatory number 10,  
3 second set, page 7; third set, page 5.

4 A. Uh-huh.

5 Q. This appears to be a repeat with you  
6 referring us to supplemental answers 5, 7 and 9.

7 A. Yes.

8 Q. Can you be any more specific about  
9 the answers given that we've already discussed  
10 including the phrases "previous discovery," "all  
11 discovery done," or "information"?

12 A. No.

13 Q. Okay. At the time of this response,  
14 did you inquire whether any more responsive  
15 information was available?

16 A. Yes.

17 Q. Were you told that that was all there  
18 was?

19 A. Yes.

20 Q. Have you learned of any more  
21 information that is responsive since May 4th?

22 A. No.

23 Q. Will you look at interrogatory number  
24 11, and the responses second set, page 8; third  
25 set, page 5.



1 A. I've reviewed them.

2 Q. Is your answer complete?

3 A. Yes.

4 Q. So there is no additional evidence  
5 other than that already found in supplemental  
6 answers 5, 7, and 9?

7 A. That's correct. And I'll repeat,  
8 since we're repeating my prior testimony, the  
9 caveat that discovery is ongoing or fact  
10 investigation is ongoing and if additional evidence  
11 is learned --

12 Q. Since May 4th?

13 A. It's ongoing, period. That's right.

14 Q. But this --

15 A. As of May 4th it's complete, yes.

16 Q. And again, have you learned of any  
17 more information since responding that is  
18 responsive?

19 A. No.

20 Q. Interrogatory number 12, and the  
21 supplemental response on page 5 and the second set  
22 response is on page 8. Once again, you refer us to  
23 past responses?

24 A. Yes.

25 Q. And "all discovery done," can you be

1 any more specific?

2 A. Other than what's provided in the two  
3 responses, no.

4 Q. And is there any part of any document  
5 listed that you can point to be more specific?

6 A. Again, without the documents in front  
7 of me, it's impossible for me to cite you the  
8 specific sections.

9 Q. When you did your responses, did you  
10 look at any specific parts of any documents?

11 A. I'm sure I did, or had people look at  
12 them and report to me about their contents and this  
13 collaborative effort to respond, yes.

14 Q. Why didn't you include any specific  
15 part of any documents?

16 A. Because that's not what the question  
17 asked for.

18 Q. Did you inquire whether there was any  
19 more responsive information --

20 A. Yes.

21 Q. -- at the time?

22 Were you told there was none?

23 A. Yes.

24 Q. Have you learned of any more  
25 information since that is responsive?

1 A. No.

2 MS. LANDEVER: That's it.

3 MR. JAFFE: I have a few follow-up  
4 questions. It won't take more than a couple  
5 minutes.

6 CROSS-EXAMINATION (FURTHER)

7 BY MR. JAFFE:

8 Q. You were asked a while back about  
9 insurance and whether any of those policies include  
10 duties to notify.

11 And what steps -- when Penn Central  
12 receives a complaint or another type of claim, what  
13 steps does Penn Central take in order to determine  
14 whether any insurance company should be notified?

15 A. It depends on the claim and our  
16 assessment as to whether there's any insurance  
17 coverage, first of all. Second of all, it may,  
18 depending on assessment, be sent to our outside  
19 insurance broker who then has the responsibility of  
20 notifying the carriers. Sometimes our risk  
21 management department might notify carriers  
22 directly, but that's rare.

23 Q. So if one wanted to determine what  
24 insurance companies might have coverage over the  
25 litigation, the claims in the litigation that this

1 deposition is being taken for, one would contact  
2 either your insurance broker or -- I'm sorry, did  
3 you say your risk management department?

4 A. Yeah.

5 Q. Could you tell me the name of your  
6 insurance broker, please?

7 A. I would have to look for this policy  
8 period as to who it was. My suggestion is, if you  
9 want that information for this litigation, I  
10 believe it's within the scope of discovery, you  
11 ought to ask for it in a document request or  
12 interrogatory.

13 Given the fact that there's pending  
14 litigation, my instruction to nonlawyers is,  
15 obviously, or respond to inquiries from litigants  
16 against us. We'll serve your discovery request if  
17 you think it's within the scope of the discovery.

18 Q. Are you refusing to answer the  
19 question?

20 A. You asked how you go about getting  
21 the information.

22 Q. And my last question was: What is  
23 the name of your insurance broker?

24 A. I don't know for that period of  
25 time. And again, I will look for it. Brokers

1 change from year to year, and I don't know who was  
2 the broker for that period of time or if there was  
3 one.

4 Q. Okay. Is there somebody in charge, a  
5 particular person in charge of your risk management  
6 department?

7 A. Yes. There's a Vice-President of  
8 Risk Management.

9 Q. That persons name is?

10 A. Bruce Brumbaugh, B R U M B A U G H.

11 Q. Thank you. You described earlier  
12 that you, among other courses, teach a course in  
13 pretrial litigation; is that correct?

14 A. That's correct.

15 Q. Could you tell me what the subject  
16 matter is covered in your prelitigation course are?

17 A. I'll refer you to my book is  
18 basically the format for the course, but it covers  
19 what litigators do in a case from prefiling  
20 investigation through the final pretrial  
21 conference.

22 Q. So that would include civil  
23 discovery?

24 A. That's correct.

25 Q. I'm sorry, when you said refer me to

1 your book; which of the two books are you referring  
2 me to?

3 A. The Ohio Pretrial Litigation Manual.

4 Q. Just to clarify the record: You have  
5 not produced any documents in response to document  
6 request contained in the 36B Notice of Deposition  
7 today?

8 A. No. For the reason that all  
9 documents responsive have already been produced.

10 Q. All right. Penn Central's responses  
11 are dated as shown in Exhibit 3, this deposition on  
12 the 18th of April, 1994. Can you tell me why it  
13 took Penn Central so long to respond to the  
14 interrogatories and document request?

15 A. My understanding is we responded to  
16 them within the rule, or the rule as extended by  
17 counsel. I don't know, Mr. Jaffe, the discussions  
18 between counsel and/or the court on those  
19 responses.

20 Q. All right. For the purposes -- well,  
21 I will represent to you here that there was no  
22 extension of time and you did not respond within  
23 the time required under the Federal Rules.

24 And so I'm asking now if there's any  
25 reason other than those that may have caused you or

1 did, in fact, cause you to answer these  
2 interrogatories and requests for production late?

3 A. All I can say is there were thousands  
4 of claims, many of which have interrogatories to be  
5 answered, et cetera; we try to comply with the  
6 Rules of Civil Procedure and try and get these  
7 cases resolved timely. I don't know specifically  
8 without going back and interrogating Mr. Cunningham  
9 and members of his firm and my staff to get the  
10 answer to your question.

11 Q. I would certainly appreciate the  
12 answer to that question if you could supplement  
13 that. I would appreciate it.

14 A. I'm not agreeing to supplement  
15 anything. You can serve an additional  
16 interrogatory request, if you think it's  
17 discoverable as to why our discovery wasn't in the  
18 rule. I would probably disagree with you that that  
19 is discoverable.

20 Q. You are not the attorney on the case  
21 and you have not made an objection.

22 MR. CUNNINGHAM: Objection, Mr.  
23 Jaffe. I would not accept your representation that  
24 this wasn't done within the time or an extension by  
25 agreement.

1 MR. JAFFE: I would certainly be  
2 happy to learn what you're talking about.

3 MR. CUNNINGHAM: We disagree with  
4 your characterization.

5 BY MR. JAFFE:

6 Q. You stated, and I'm paraphrasing here  
7 not quoting, that to several of the questions here,  
8 that all evidence relevant and nonprivileged was --  
9 has been produced. Has Penn Central provided a  
10 privileged list to identify the privileged  
11 documents responsive to the United States document  
12 requests?

13 A. I think my earlier response was that  
14 everything that is responsive; not everything  
15 that's relevant, everything that's responsive,  
16 because clearly things have been produced that  
17 aren't relevant but within the scope of discovery.

18 Q. What I'm getting at is: Let me ask  
19 the question again another way.

20 MR. CUNNINGHAM: Let me answer your  
21 question.

22 THE WITNESS: Let him ask it.

23 Q. Have privileged documents which are  
24 responsive; however. Withheld for reasons of  
25 privileged been identified?



1           A.     As we sit here today, I cannot  
2 articulate for you any documents that have been  
3 withheld on the basis of privilege. If they have,  
4 I would assume that some sort of privilege list is  
5 put together. Without going back and reviewing all  
6 the discovery in this case, I can't answer your  
7 question.

8                   MR. JAFFE: Did you want to say  
9 something relevant to that?

10                  MR. CUNNINGHAM: No. I think he's  
11 answered it.

12                 Q.     Referring your attention to the  
13 document searches that are being done in  
14 Philadelphia, you stated that at various times you  
15 made requests for particular documents searches or  
16 particular areas of form that you wished to  
17 elucidate through those searches.

18                   Were those instructions given orally  
19 or in written form?

20                 A.     I believe orally.

21                 Q.     Did you keep any notes of those  
22 instructions?

23                 A.     No.

24                 Q.     Are there any documents that you  
25 could review in order to refresh your recollection

1 as to what those instructions were?

2 A. No.

3 Q. You described your preparation for  
4 this deposition previously. Could you tell me how  
5 many hours you spent preparing for this deposition  
6 today?

7 A. I don't know. I would say probably  
8 in the neighborhood of six to ten.

9 Q. Are you aware of the litigation  
10 that's presently ongoing relevant to this site  
11 before the special court?

12 A. Yes, I am.

13 Q. In responding to the interrogatories  
14 or document requests, were any inquiries made of  
15 people responsible for the special court case to  
16 see if they had any documents which were relevant  
17 to the responses?

18 A. Well, to the extent that those  
19 documents were in our possession, yes. Both cases  
20 are my responsibility, and I don't separate  
21 responsive information by cases. If a piece of  
22 information is responsive and it's in our  
23 possession, we produce it. I can't, without going  
24 back and looking at all the specific answers and  
25 then trying to trace back where all the information

1 came from, honestly answer your question. It's  
2 possible.

3 Q. Let me direct your attention to  
4 United States interrogatory number 3, which is on  
5 Exhibit No. 3.

6 A. Yes.

7 Q. Let me ask you specifically in  
8 response to this interrogatory --

9 A. Yes.

10 Q. -- were any of the Valuation  
11 documents or the -- the inspections of facilities  
12 that have been gathered for the purposes of a  
13 special court been reviewed in order to respond to  
14 this question?

15 A. Interrogatory number 3?

16 Q. Yes.

17 A. It would not occur to me where to  
18 look in those documents for a response to this  
19 question.

20 Q. Well, you stated previously that  
21 there were valuations of the personal property  
22 as-is where-is?

23 A. Right.

24 Q. And I would assume that that is  
25 relevant to this special court proceedings?

1           A.    But, again, those documents wouldn't  
2 identify the substances remaining at the site after  
3 the termination of our interest.

4           Q.    For example, would they not --

5           A.    You're welcome to look at them.  It  
6 would not occur to me that they would be in there.  
7 So the answer to your question is, no.

8           Q.    Let me ask you a particular  
9 hypothetical; if there were 14 5-gallon drums of a  
10 particular substance at the site, would they not be  
11 identified as an item of valuation at the Elkhart  
12 Rail Yard?

13          A.    I wouldn't think so.  I don't know.  
14 I would be surprised.

15          Q.    I haven't seen the documents.  I'm  
16 asking to --

17          A.    These are markets value appraisals.

18          Q.    Did they go to the Elkhart Rail Yard  
19 and say X number of dollars or did they actually  
20 identify every specific --

21          A.    I think the valuation we're talking  
22 to is a trip to the site to determine the market  
23 value of the property.

24          Q.    What I'm asking you:  What kind of  
25 detail was in those?

1           A.    I don't know without having them in  
2 front of me and reviewing them again. Different  
3 appraisers and different level of detail. You're  
4 welcome, again, to look at them.

5           Q.    And as you sit here today, you don't  
6 recall whether they were reviewed --

7           A.    I said I don't think so. I would be  
8 surprised. But it's possible.

9           Q.    Okay. There was some discussion  
10 about the costs incurred at the sites and their  
11 consistency or inconsistency with the NCP: Can you  
12 identify at this time any costs which were incurred  
13 by the United States which are not consistent with  
14 the NCP?

15          A.    Off the top of my head, without  
16 having a breakdown of those costs, when they were  
17 incurred, for what purposes, it is impossible for  
18 me to answer.

19               MR. JAFFE: To save time and save  
20 everybody the trouble here of us writing a letter  
21 and the time that it takes, the time line, I would  
22 like to request other, among the other documents  
23 that we've identified in this case that you could  
24 not answer today: I would like to get the names of  
25 the person doing the document review in

1 Philadelphia, copies of the valuation maps which we  
2 identified, I think in response to interrogatory  
3 number 1, the name of the insurance broker relevant  
4 to the time period, and I would also just for the  
5 record reserve our right to reopen this deposition  
6 as to any new documents or further discovery that's  
7 taken in responses thereto.

8 With that, I have no further  
9 questions.

10 MS. LANDEVER: Just for the record,  
11 we reserve that right as well.

12 THE WITNESS: Without agreeing that  
13 you have that right, I recognize that you reserved  
14 it.

15 MR. JUNK: I have one line of  
16 questioning, if I may.

17 CROSS-EXAMINATION (FURTHER)  
18 BY MR. JUNK:

19 Q. The two people who are reviewing  
20 documents in Philadelphia.

21 A. Yes.

22 Q. Are they employees of Penn Central?

23 A. No. They're independent contractors.

24 Q. And they are specifically hired for  
25 this purpose?

1 A. Yes.

2 Q. And only this purpose?

3 A. Yes.

4 MR. JUNK: That's it.

5 MR. CUNNINGHAM: We want signature.

6

7

8

MICHAEL L. CIOFFI

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DEPOSITION CONCLUDED AT 2:45 P.M.

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## C E R T I F I C A T E

STATE OF OHIO :

: SS

COUNTY OF HAMILTON :

I, JANE ANNE FITCH, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do hereby certify that before the giving of his aforesaid deposition, the said MICHAEL L. CIOFFI was by me first duly sworn to tell the truth, the whole truth and nothing but the truth; that the foregoing is the deposition given at said time and place by the said MICHAEL L. CIOFFI; that said deposition was taken in all respects pursuant to Notice to Take Deposition; that said deposition was taken by me in stenotypy and transcribed by computer-aided transcription under my supervision; that the transcribed deposition is to be submitted to the witness for his examination and signature; that I am neither a relative or nor attorney for any of the parties to this cause, nor relative of nor employee for any of their counsel, and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office at Cincinnati, Ohio,

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1 this

2 day of , 1994.

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7 MAY 15, 1996. NOTARY PUBLIC-STATE OF OHIO

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